

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISC. LAND APPLICATION NO. 51 OF 2022

(Arising from the decision of the High Court of Tanzania at Musoma in Misc. Land Appeal No. 23 of 2022, F. H. Mtulya, J.)

BETWEEN

WAMBURA WARYOBA NYANGIRA APPLICANT

VERSUS

MUHERE MWITA MARWA RESPONDENT

RULING

18th & 25th May, 2023

M. L. KOMBA, J.:

The applicant, **Wambura Waryoba Nyangira** has by way of chamber summons made under section 47 (3) and (2) of the Land Disputes Courts Act [Cap 216 R.E 2019] Rule 46 (1) and 45 (a) of Court of Appeal Rules of 2009 (amendments) Rule 2019, brought this application. He seeks this court to certify a point of law worth to be considered by the Court of Appeal of Tanzania from the judgment and decree delivered by this court (Mtulya, J.) on 22nd August, 2022 in Misc. Land Appeal No. 23 of 2022.

The application accompanied by an affidavit deponed by the applicant. On the other hand, the respondent filed a counter affidavit to contest the application.

Briefly, the appellant herein won the land suit before Baraki Ward Tribunal in Land Application No. 20 of 2017. Aggrieved, the respondent appealed to the District Land and Housing Tribunal for Tarime at Tarime (the DLHT) in Land Appeal No. 156 of 2017. Before the DLHT, the appellant raised the preliminary objection concerning the jurisdiction of the tribunal on the matter filed out of time. The preliminary objection was dismissed. As the decision of the DLHT was not of what the appellant desired, he appealed to this court in Misc. Land Appeal 20 of 2017.

This court (Mtulya, J.) went on quashing the decision and setting aside the proceedings of the DLHT in Land Appeal No. 156 of 2017 and ordered that if the respondent so wish, he may file an application for enlargement of time. The court further ordered each party to bear its own costs. This final order related to costs is what triggered the appellant to file this application seeking the wisdom of the Court of Appeal on the particular matter as he thinks that he deserves to be awarded the costs since the matter was decided on his favour.

When the matter came up for hearing the applicant appeared solo, fended for himself whilst on the other hand the respondent enjoyed the services of Mr. Yesse Simon Lubunda, the learned advocate.

Submitting on supporting of the application, the applicant contended that on 22nd August, 2022 he was declared a winner in his appeal but he was not given the costs on the ground that counsel for the respondent admitted to the error committed and that at any time the new case may arise. Citing the cases of **Mohamed Salmin vs Tumaini Omary Mapesa**, Civil Application No. 4 of 2014 CAT at Dodoma and **Andrew Ndakidemi vs Nassoro Swila and Majembe Auction Mart**, Land Appeal No. 41 of 2020 High Court Iringa, the applicant submitted that he is aware that granting costs is the discretion of the court but it must be exercised judiciously basing on legal principles. He submitted that each case should be decided by its own circumstances. From the fore cases he referred, **Mohamed Salmin** (supra), the applicant submitted that the applicant advocated admitted his mistake and prayed his application to be strike out without costs but the CAT didn't bother, it went on grant costs incurred by the other party.

The applicant argued that he incurred costs in the appeal due to misconduct of the respondent which he believes in the circumstance of

the case he deserved to be awarded the costs. He finally prayed this court to adopt his affidavit and certify on the point whether is right to the High Court to deny costs without justification.

Rebutting, the respondent counsel, averred that there is nowhere in the applicant's affidavit shows the point of law for certification. The counsel submitted that the applicant failed to mention the section and the law which was contravened by the court when decided not to grant costs. He submitted further that case laws recognized that costs are the discretion of the court. Referring to section 30 (1) of the Civil Procedure Code (the CPC) the counsel submitted that the section is to the effect that costs awarded in discretion of the court. He proceeded that the section used the word "shall" which means it is mandatory.

Citing the cases of **Richard Mroso vs Hatibu Ally Mketu**, Land Appeal No. 55 of 2022 High Court Dar es salaam and **Edwin Mtei vs Fin Construction Co. Ltd**, Civil Refence No. 11 of 2022, the counsel contended that granting costs is not automatic, it is upon the discretion of the court. The applicant's counsel proceeded that at page 6 of the impugned judgment, the Judge complied with the requirement of section 30 (2) of the CPC by providing the reasons for not granting costs. The

counsel finalized by beseeching this court to adopt the respondent counter affidavit and dismiss this application with costs.

In rejoinder, the applicant submitted that any statement showing non satisfaction of the decision is enough to be point of law because reasons adduced are not justifiable. He insisted that he wanted to know if it was proper for the 2nd appellate court to deny the applicant his costs. The applicant continued by praying this court to allow his application and to do away with technicalities. He also prayed this court not to consider the respondent prayer on costs.

In the light of the submissions by both sides, the issue for determination is whether the applicant has advanced a point of law worth for consideration by the Court of Appeal.

Since the decision subject to this application originated from the ward tribunal, the applicant's appeal to the Court of Appeal stands upon this Court certifying the point(s) of law involved in the intended appeal. The law is settled that the court certifying the point of law has to evaluate the proposed points of law and satisfy itself whether they are worth to be certified to the Court of Appeal. See **Dorina N. Mkumwa vs. Edwin David Hamis**, Civil Appeal No.53 of 2017) [2018] TZCA 221.

In our case, as depicted from the applicant's affidavit, the applicant proposed the following points to be certified by this court as the points of laws worth to be considered by the Court of Appeal;

1. Whether it was proper for the 2nd appellate court to deny the applicant the costs without giving justifiable reasons for doing so.
2. Whether the principle applied by the high court was reasonable in refusing to grant costs.

It is my considered view that, what has been proposed by the applicant are not a points of law worth to be considered by the Court of Appeal. As rightly argued by both parties, granting costs is discretion of the court which must be exercised judiciously. The respondent's counsel went further and referred us to section 30 (1) and (2) of the CPC which provide that the matter of granting costs is within jurisdiction of the court and when it appears that the court denied the same, it should state the reasons. This was well stated in the case of **Anna Ufoo Ulomi Vs. Ramadhani Mohamed**, Land Appeal No. 15 of 2016.

"Regarding costs, the law gives discretion for the court/tribunal to impose costs. Where the Court directs that no costs shall be paid, the court shall state its reasons; section 30 (1) of the Civil Procedure Code."

Though it is upon court discretion to grant the costs, but in page 6 of the judgment of this court in Misc. Land Appeal No. 23 of 2022 the presiding Judge (Mtulya, J.) did provide reasons why he decided not to grant any costs. The related paragraph reads as follows;

, I am aware the parties were in dispute since 2017 and the appellant complained on costs incurred in the case, but this court has a practice of declining costs in circumstances where officers of this court concede obvious points of law and in a situation where a dispute may raise again to identify the rightful owner of the disputed land. I award no costs in the present appeal. Each party shall bear its own costs.'

Therefore, it is evident that, the second appellate court did use its discretion judiciously and was adhered to the requirement of the law. I find no issue at stake that require the attention of the Court of Appeal. In the event, the application is dismissed for want of merit. The respondent shall have his costs.

It is so ordered.



MLK
M. L. KOMBA
JUDGE

25TH MAY, 2023