

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**MISC. CIVIL APPLICATION NO. 57 OF 2023**

**CHRISTINA BONIPHACE.....APPLICANT**

***VERSUS***

**KIKUNDI CHA MWANGA (*SHALILOTE KAIZA*) .....RESPONDENT**

**RULING**

*14<sup>th</sup> & 14<sup>th</sup> June, 2023*

***Kilekamajenga, J.***

The parties have been in the courts' corridors since 2017. The first case concerning the same parties commenced in the Primary Court of Mkuyuni and finally reached the District Court where the proceedings of the trial court were nullified. The respondent went back to the same Primary Court and initiated Civil Case No. 89 of 2019. In this case, the respondent claimed Tshs. 2,240,000/= from the applicant who was the treasurer of the group (respondent). It is believed that, the members contributed a certain amount of money and entrusted the same to the applicant as the treasurer. In the respondent's calculation, the applicant misappropriated the above amount of money. In the Primary Court, the applicant lost the case and was ordered to pay the decretal sum of Tshs. 2,240,000/= without any interest. She appealed to the District Court where the respondent lost the case. Both the applicant and respondent preferred appeals to this Court. For an expedient disposal of the case, this Court



consolidated the two appeals and delivered a judgment in favour of the respondent. Still irked with the decision, the applicant now wishes to approach the Honourable Court of Appeal of Tanzania for justice.

The instant application, therefore, seeks the order of this court to certify that there is a point of law to be determined by the Court of Appeal. The application is made under **section 5(2)(c) of the Appellate Jurisdiction Act, Cap. 141 RE 2019** together with any enabling provision of the law. The applicant supported the application with an affidavit containing seven paragraphs. The seventh paragraph canvasses the alleged points of law thus:

- (a) Whether the second appellate court was correct to rely and hold that the respondent proved their case at trial court on the balance of probability.*
- (b) Whether the second appellant court was correct to consider the previous records of the trial court in reaching its decision while the entire previous proceedings with its judgment was quashed and set aside by the competent court.*

The learned advocate, Mr. Yuda Rudovick Kavugushi who appeared for the applicant prayed to adopt the affidavit in support of the application and further clarified the above alleged points of law. He further averred that, the respondent's evidence has assorted versions and thus contradictory. Even the total number of members of the group kept on changing. In his view, this court

erred in deciding that the respondent proved the case on the balance of probability. He further impugned the decision of this court for relying on the records which were nullified. He prayed for the certification of this court on a point of law to approach the Court of Appeal. On the other hand, the two representatives from the respondent have nothing to say rather than objecting the application.

Having considered the argument from the counsel for the applicant on the proposed point of law, I should first enlighten that, this court is entrusted with the responsibility to certify the existence of point of law for all cases originating from the Primary Court or Ward Tribunal. The requirement to endorse a certificate of point of law when seeking a third appeal is hinged on many reasons, among other things; **first**, disputes from the Primary Court may be minor and their determination therefore may not necessarily require the intervention of the higher authority such as the Court of Appeal of Tanzania. **Second**, disputes are expected to be resolved expeditiously, hence their determination, should not go beyond the High Court unless there is serious point to involve the Court of Appeal of Tanzania. It follows therefore, a point of law to the Court of Appeal must be a solemn issue of law to require the intervention of the highest order. The Court of Appeal has already set a standard on what amounts to a point of law in the case of **Mohamed Mohamed and Another v.**

**Omari Khatib**, Civil Appeal No. 68 of 2011 (unreported) which was quoted in the case of **Magige Nyamoyo Kisinja v. Merania Mapambo Machiwa**, Civil Appeal No. 87 of 2018, CAT at Mwanzan (unreported) thus:

*"...for instance, where there is a novel point, where the issue raised is unprecedented, where the point sought to be certified has not pronounced by the Court before and is significant and goes to the root of the decision, where the issue at stake involves jurisdiction, where the court(s) below misinterpreted the law etc..."*

The Court of Appeal has gone further directing that:

*"Therefore, when the High Court receives applications to certify point of law, we expect Rulings showing evaluation of the question whether what is proposed as a point of law, is worth to be certified to the Court of Appeal. This Court does not expect the certifying High Court to act as an uncritical conduit to allow whatsoever the intending appellant proposes as point of law to be perfunctorily forwarded to the Court as point of law. We are prepared to reiterate that Certificates on points of law for appeals originating from Ward Tribunals mark a point of finality of land disputes that are predicated on matters of fact. Certificates are designed to ensure that land disputed originating from Ward Tribunal come to an expeditious end, preferably in the High Court."*

To refine further the above principles of the law, a point of law must be a critical issue worth the convention of three fold minds of Honourable Justices of the Court of Appeal. It may be a waste of resources and an abuse of court processes to certify a point that solely bases on evidence; such a point ought to be

addressed in the two lower appellate courts. This court may spurn certification where pertinent issues of the case have already been addressed or where the point sought for certification, even if resolved, may not change the verdict of the two lower appellate courts. It therefore makes sense that, a point of law must be something novel; something unique, or where the lower courts have committed a serious misapprehension of the law. In my view, the best test should be whether the determination of a certified point of law may contribute to the jurisprudence of the legal fraternity or where the determination of a point of law may have reverberation for justice to the applicant.

In the instant case, the above proposed points of law fall short of the criteria needed for certification. In my view, the alleged points of law are purely factual issues and I find no reason to bother the Honourable Court of Appeal with issues of facts and not law. I hereby dismiss the application with costs. Order accordingly.

**DATED** at **Mwanza** this 14<sup>th</sup> day of June, 2023



**Ntemi N.  
Kilekamajenga.  
JUDGE  
14/06/2023**





**Court:**

Ruling delivered this 14<sup>th</sup> June 2023 in the presence of the applicant and Ms. Shalilote Kaiza and Geogina Joshua representing the respondent. Right of appeal explained.

**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**14/06/2023**

