

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISC. LAND APPLICATION NO. 52 OF 2022

*(Arising from Decision of the High Court of Tanzania at Musoma in Misc. Land
Appeal No. 08/2022 (Mahimbali, J))*

MAZIGO BISEKOAPPLICANT

VERSUS

WEGORO TIMBIRA

**(Administrator of the Estate of the RESPONDENT
Late MATAI MATETE)**

RULING

20th & 20th June, 2023

M. L. KOMBA, J.:

The applicant, **MAZIGO BISEKO** has by way of chamber summons made under section 47 (2) of the Land Disputes Courts Act [Cap 216 R. E. 2019] (the Act) brought this application seeking 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 (Mahimbali, J.) on 5th August, 2022 in Misc. Land Appeal No. 08 of 2022. The application accompanied by an affidavit deposed by the applicant.

Briefly, the applicant herein lost in the land suit to the District Land and Housing Tribunal for Mara at Musoma (the DLHT) in Land Application No.

81 of 2017. Before the DLHT, the respondent claimed that the applicant was attempting to acquire the land which belonged to respondent's father, one **Timbira Matai Matete** (who is now deceased). Applicant lost again in appeal No. 08 of 2022 before Mahimbali, Judge. Respondent who is administrator of the deceased estate filed the application under that capacity.

Locus standi of the respondent as decided in the appeal is what triggered the applicant to file this application seeking the wisdom of the Court of Appeal on the particular matter as he believes so far as deceased was survived by the wife, then, the property remains in the hands of the wife as co-owner and there was no need of appointing administrator.

When the matter came up for hearing the applicant had legal service of Mr. Thomas Manyama Makongo, an Advocate whilst on the other hand the respondent stand solo, fended for himself.

Submitting in supporting of the application, counsel for the applicant contended that reason for this application is the truth that the matter started at Namhula Ward Tribunal as per 5th paragraph of the affidavit and according to law they are supposed to be granted certification of point of law by this court. Counsel referred paragraph 6 of the applicant affidavit claiming that the Ward Tribunal lacks jurisdiction as the matter was time

barred and respondent has no locus to appear and defend. He said according to this court decision regarding to Land Appeal No. 8 of 2022, the respondent owned the disputed land since 1990 to the date of judgment then according to him, the respondent was not supposed to use the title of administrator. The counsel was of the views that, if this is the position, then this court mis-interpreted provisions of Magistrate Court Act, Cap 11 and Section 71 of the Probate Act, Cap 352 for conceding that the respondent was correct to use that title.

It was his submission that the person who was supposed to file the application from the beginning is the wife of the deceased who is still alive. He said, the deceased Matai Matete was jointly owning the said land with his wife, the land was co-owned. He adduced that under the law if the property is jointly owned then when one dies the property remains in the hand of surviving partner. To boost his submission, he refers this court to the book of 'law of real property by R. E. Megary and H.W.R Wade 4th edition at page 392 where there is the principle of *jusci- accrescendi* is explained. It was his submission that from this principle, a person who was supposed to file case concerning the land is the wife of the Matai and not administrator as was in the case of **Jackson Nyasari vs. Nyama Sagare Nyasali** (PC) Probate Appeal No. 6/2007 (unreported)

Nyangalika, J. (as he then was) he said 'where one spouse dies the entire estates remains in the hands of his wife as both of them has equal right in that estate' and added that essence of filing probate cannot arise until both spouse dies.

Mr. Makongo further submitted that in this case one spouse is still alive so there was no need of appointing the administrator to administer the estate which was subject of this case. Respondent herein is the son of **Nyasato Timbira** who is alive and was not directed by Nyasato to file a case on her behalf and therefore, he said, there is a need of this legal issue to be addressed by the Court of Appeal and he prayed for the certification.

Rebutting, the respondent in his short submission averred that issue that when his father dies, the wife remain with property is not correct. To his understanding when father dies the property is inherited by children and it is not turned to be the property of wife of the deceased. If at all the procedure is when a father dies then wife become an administrator automatically, then he could have not been appointed as an administrator bearing in mind that there was no objection.

Respondent further submitted that under customs, when a person dies, they don't appoint administrator unless there is problem, that's why he

was appointed as administrator. He insisted that, their mother (deceased wife) is too old to administer the estate if at all she is the owner and that's why he was appointed, a young energetic man to administer the property of the late father as the land was owned by his late father.

In his rejoinder, counsel for the applicant submitted that respondent conceded that he is the son of the deceased and his mother is still alive and he has no authorization from his mother to represent her and insisted the case was defended by the wrong person. He re-iterated his prayer that this court certify point of law so that he can move to the higher level.

In the light of the submissions by both sides, the issue for determination is whether the applicant has advanced a point of law worth of consideration by the Court of Appeal. The law governing certification is section 47(3) and sub section (2) is about appeal as recited here under;

(2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.

(3) Where an appeal to the Court of Appeal originates from the Ward Tribunal, the appellant shall be required to seek for the Certificate from the High Court certifying that there is point of law involved in the appeal.

For this court to certify that there is point of law, the matter must originate from the Ward Tribunal as the section above quoted indicates. From the record, counsel for applicant at paragraph 5 of his affidavit deposed that the case originated from the Namhula Ward Tribunal and therefore the certification by this court is necessary. The counsel for the applicant did not mention number of cases at Ward Tribunal which is the root of this application neither did he attach the decision and proceedings to that effect. Reading careful records of this application, judgement in land appeal No. 08 of 2022 and Land Application No. 81 of 2017 all indicate that the matter originated from the DLHT in Land Application No. 81 of 2017.

In the course of composing judgment, I further discover that chamber summons filed by the applicant was made under section 47(2) which does not require certification by this court. Following these irregularities, today when parties appeared for judgment, I ordered them to address this court on the following issues; on whether the matter originate from Ward tribunal and whether the court is properly moved by cited provision of law.

Applicant informed this court that the matter was filed in the Namhula Ward Tribunal where he succeeded and awarded 16 acres out of 32 acres which was in dispute. He further submitted that the decision was

challenged by the respondent where the appeal was struck out as respondent had no letter of administration of the estate of his father. He said he don't know about section of law.

On the other side respondent had similar story that the matter originated from Namhula Ward Tribunal via Application No. 02 of 2013 which was decided in 2014. He further informed this court that he appealed to the DLHT where it was discovered that he was not appointed as administrator of the estate of the late Mzee **Timbira Matai Matete** and the case was trucked out. Due to the size of the land, he was advised by the Magistrate to file fresh suit in the DLHT and he complied by filing application No. 81 of 2017. Respondent had nothing to submit on the second issue.

The law is clear that for the certification by this court the matter must originate from the Ward tribunal but counsel for applicant failed to prove the same from his submission, rather, form submission by parties this court noted that due to the size of the land, application was filed at the DLHT by filing application form which was filed by the respondent on 20/04/2017 and was admitted on the same date.

If that is the case then, the proper provision of law to move this court is section 47(2) which is about application for leave to appear to the Court of Appeal and not subsection (3). That is to say this court was not properly moved as the Chamber Summons is filed under section 47(2) and the

counsel for the applicant is seeking for the certification claiming that the matter originate from the Ward Tribunal.

This court finds that this application is incompetent and therefore lacks jurisdiction to entertain the matter as it was proved the matter originated from DLHT via application No. 81 of 2017.

In the event, the application is hereby struck out. The respondent shall have his costs.

It is so ordered.




M. L. KOMBA

Judge

20th June, 2023