

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 111 OF 2022**

(Originating from Land Revision No. 6 of 2021, High Court of Tanzania at Arusha,  
C/F the District Land and Housing Tribunal of Arusha at Arusha on Application No. 75  
of 2007 and Appeal No. 61 of 2012 originating from Application No. 44 of 2007  
Mateves Ward Tribunal)

**BETWEEN**

**GODFREY MELAMI.....APPELLANT**

**VERSUS**

**LONGUTUTI METISHOOKI..... RESPONDENT**

**RULING**

18/09/2023 & 30/10/2023

**MWASEBA, J.**

The Applicant herein being aggrieved by the decision of this Court in Land Revision No. 6 of 2021 (Kamuzora J) dated 25<sup>th</sup> day of July 2022, lodged this application by way of chamber summons supported by the affidavit of one Emanuel Shio, counsel for the Applicant urging this Court to grant certificate on points of law to appeal to the Court of Appeal. The application has been preferred under **Section 5(2) (c) of the Appellate Jurisdiction Act**, Cap. 141.

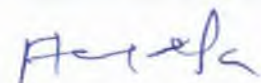


According to the affidavit deposed by the Applicant on 22<sup>nd</sup> August, 2022 in paragraph 6, the following are grounds required for certification:

- i. Whether the High Court was legally right to set aside the decision of the District Land and Housing Tribunal of Arusha at Arusha.
- ii. Whether it is proper in law for the High court to hold that the Appeal No. 61 of 2012 was wrongly admitted and determined by the District Land and Housing Tribunal of Arusha at Arusha.
- iii. Whether, in law it is proper for the High Court to hold that the execution process was not properly conducted and closed by the District Land and Housing Tribunal.
- iv. Whether it is proper in law for the High Court to hold that lack of locus standi for the Respondent did not affect the rights of the parties.

At the hearing of this application, which was done orally, Mr. Emmanuel Shio, learned Advocate represented the Applicant whereas Ms. Frida Magessa, Learned Counsel appeared for the respondent. The application was disposed of by way of written submission.

Arguing in support of ground one for certification, Mr. Shio observed that, they want to challenge the act of the High Court to set aside the



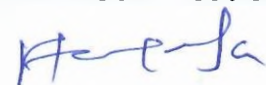
decision of the DLHT while it was legal and proper, hence it was illegal for the High Court to set aside the said decision.

Coming to the second ground for the certification, Mr. Shio submitted that it was wrong for the High Court to hold that Appeal No. 61 of 2012 was wrongly admitted by the DLHT while it was never challenged by the respondent.

Mr. Shio submitted on third ground for the certification that, execution was properly done by the DLHT so it was wrong for the High court to hold that it was not properly conducted thus its decision caused injustice to the parties.

On the last ground for certification, Mr. Shio argued that it was wrong for the High Court to hold that Lack of locus stand did not affect the right of parties while it was the administrator of the estate who is vested with the power to institute Legal action against the estates of the deceased. Thus, they intend to argue to the Court of Appeal that the respondent had no locus standi to institute any legal action against the applicant.

It was his further submission that based on the cited intended grounds of appeal, they are worth and raised contentious issues to be



determined by the Court of Appeal. Thus, he prayed for the applicant to be given right to be heard at the Court of Appeal. He supported his arguments with **Article 13 (6) (a) of the Constitution of the United Republic of Tanzania**, 1977 and a number of cases including the case of **Said Ramadhan Mnyanga v. Abdallah Salehe** [1996] TLR 74. He prayed for the application to be granted.

Contesting the application, Ms. Frida submitted that on the first ground for certification, the High Court was correct to set aside the decision of the DLHT as it was observed that there were two conflicting decisions where one allowed execution in favour of the applicant (Execution No. 75 of 2007) and the other allowed execution in favour of the respondent (Execution No. 75 of 2007). More to that, the record shows that the execution was issued on 27/08/2013 before the judgment of Appeal No. 61 of 2012 was composed on 6/8/2013 and delivered to the parties on 18/9/2013. She submitted further that, appeal No. 61 of 2012 was filed after the lapse of three years after the decision of the Ward Tribunal. While the decision of the Ward Tribunal was delivered on 19/7/2007, the appeal was filed on 21/11/2012. Thus, the High Court was correct to hold that Appeal No. 61 of 2012 was wrongly admitted at DLHT.

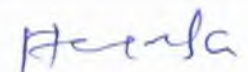


Coming to the issue of locus standi, Ms. Frida submitted that the respondent filed an application at Mateves Ward Tribunal only to preserve the land of the deceased which were to be expropriated by the applicant, that is the reason he did so before being appointed as administrator of the estate of the deceased and it was the same argument raised by Hon. Kamuzora in land Revision No. 6 of 2021. She supported her arguments with a number of cases including the case of **Kagozi Amani Kagozi v. Ibrahim Seleman and 6 Others**, Land Appeal No. 2 of 2019 (HC-Unreported).

It was her further submission that, the applicant wants to waste the time of the court while he knows there are no arguable points worth to be determined by the Court of Appeal. More to that, there is no point of law worth to be determined by the Court of Appeal. She cited the case of **Tanzania (2000) Adventure Ltd v. Reliance Insurance Company (Tz)**, Misc. Land Application No. 37 of 2017.

Having heard the rival submissions from the counsels for the applicant and the respondent, this court will now determine the merit of the application.

It is a trite law that, a certification on points of law for appeal purposes is not automatic, this court will have to consider points to be certified as



contained in paragraph 6 of the affidavit of the Applicant if they are worth to be considered by the Court of Appeal.

**Section 47 (3) of the Land Disputes Courts Act**, Cap 216 R.E 2019 provides that:

*"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."*

The same was held in the case of **Idi Tanu v. Abilo Nyamsangya**, Civil Appeal No. 461 of 2020 (CAT at Musoma, reported at Tanzlii) the Court held that:

*"Our determination of this point of argument is going to be simple because the law is explicit, that appeals to this Court on land matters that commenced at the Ward Tribunal require certificate on a point of law in terms of section 47(3) of the Land Disputes Courts Act [Cap. 216 R.E. 2002]."*

See also the case of **Ndamo Gamaya v. Luhende Seni Darushi**, Civil Appeal No. 93 of 2017 (CAT-Unreported).

In doing the above-prescribed duty, I will traverse the Applicant's proposed points for certification to determine if at all they qualify for

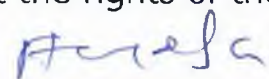


certification purposes. Starting with the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal this court noted that the same does not have any point of law worth being considered by the Court of Appeal as it involves a matter of evidence which have been covered on the 1<sup>st</sup> appellate court therefore, this court is of the considered view that the same are not worth to be determined by the Court of Appeal.

Regarding the 4<sup>th</sup> ground of certification, the applicant wants to challenge the fact that the respondent had no locus standi to sue the applicant at ward Tribunal as he was not the administrator of the estate of the deceased. The fact which was also admitted by the learned counsel for the respondent who argued that the respondent was only trying to preserve the properties of the deceased and not to distribute them. Thus, this court certify the fourth ground of the intended appeal as a point of law worth to be determined by the Court of Appeal.

That being said, this application is allowed for being meritorious. The following point is certified as a point of law worth for the determination by the Court of Appeal:


1. Whether it is proper in law for the High Court to hold that lack of locus standi for the Respondent did not affect the rights of the parties.



It is so ordered.

**DATED** at **ARUSHA** this 30<sup>th</sup> day of October, 2023.



  
**N.R. MWASEBA**

**JUDGE**