

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**ARUSHA DISTRICT REGISTRY**  
**AT ARUSHA**

**MISCELLANEOUS LAND APPLICATION NO.74 OF 2023**

*(c/f High Court of Tanzania at Arusha, Misc. Land Appeal No. 22 of 2022; District Land and Housing Tribunal Land Appeal No. 25 of 2021; Originating from Mlangarini Ward Tribunal Application No. 1/BR/ML/2020)*

**LOSERIAN SAKAYA ..... APPLICANT**

**VERSUS**

**MAYASE SAKAYA ..... RESPONDENT**

**RULING**

23/10/2023 & 13/11/2023

**KINYAKA, J.:**

The Applicant herein, Loserian Sakaya, has moved the Court for certification of points of law worth for consideration by the Court of Appeal against the decision of the Court (Honourable Mwaseba, J.) in Miscellaneous Land Appeal No. 22 of 2022 dated 9<sup>th</sup> June 2023.

The present application arises from a land dispute over ownership of 3 acres of land. The dispute was preferred by the Respondent against the

Applicant at Mlangarini Ward Tribunal in Application No. 1/BR/ML/2020. The Ward Tribunal determined the suit and declared the Respondent the lawful owner of the disputed land. Aggrieved by the decision of the Ward Tribunal, the Applicant unsuccessfully appealed to the District Land and Housing Tribunal at Arusha in Land Appeal No. 25 of 2021, hereinafter referred to as "the District Tribunal". Being further dissatisfied with the decision of the District Tribunal, the Applicant unsuccessfully appealed to the Court. Following the decision of the Court, which was against the Applicant, the Applicant lodged a notice of appeal and a request for copies of documents for preparation of an appeal on 21<sup>st</sup> June 2023.

The intended appeal being a third appeal, the Applicant has applied to the Court for certification of the following points of law for determination by the Court of Appeal:-

- (a) Whether the matter before the Court was hopelessly time barred;  
and
  
- (b) Whether the court was right to uphold the decision of the trial ward tribunal while it failed to properly evaluate the evidence tendered

before it and proceeded to consider facts that were never proved before it.

At the hearing of the Application, the Applicant was represented by Ms. Sara S. Lawena, Advocate, and the Respondent enjoyed the services of Mr. Lengai Nelson Merinyo, Advocate.

In her submissions, Ms. Lawena adopted the contents of the Applicant's affidavit and documents attached thereto. However, with leave of the Court, she opted to abandon the second point in paragraph 6(b) of the affidavit. On the remaining point, Ms. Lawena argued that there are two opposing positions of the appellate courts. She submitted that, while the District Tribunal on one hand held that the dispute arose in 2010, the Court on the other hand, held that the dispute arose in 2008. She added that, according to the evidence adduced before the Ward Tribunal which appears in the judgement of the Court in the last paragraph of page 3, the disputed trespass occurred in 2007. She therefore concluded that, the 12 years period prescribed for institution of land disputes had lapsed when one reckons from 2007 to 2020, when the Respondent instituted the suit at the Ward Tribunal.

The Counsel relied on the case of **Harban Hajimosi and Another v. Omari Hilal Seif and Another (2001) TLR p. 409** to fortify the position that, in certifying a point of law, the Court has powers to frame, approve and adopt a point of law.

In his reply submissions, Mr. Merinyo adopted the contents of his counter affidavit as part of the Respondent's submissions except on depositions relating to the second point that was abandoned by the Applicant. He submitted that according to the record, both the District Tribunal and the Court has concurred that the dispute was filed within time irrespective of the differing position that the dispute arose in 2010 and 2008, respectively. He added that there is no effect or disturbing feature that will require intervention of the Court of Appeal to determine the issue of time limitation of the dispute citing the case of **Harban Hajimosi and Another (supra)**. Mr. Merinyo prayed for dismissal of the application with costs as the point of law is not shown on the face of the record.

Ms. Lawena's rejoinder submissions were a reiteration of her submissions in chief.

Upon closure of the parties' submissions, the Court observed that the point of law proposed for certification seeks to challenge the Court's determination of a time barred matter. It is evident from the record that the matter before the Court was an appeal against the decision of the District Tribunal, and that the original suit was lodged before the Ward Tribunal and not the Court. The Court therefore asked the parties to address it on the aspect.

Ms. Lawena contended that it is on record that the matter originates from Mlangarini Ward Tribunal and it will be proper if the point was framed as 'whether the matter before the Ward Tribunal was time barred'. The Counsel contended that, the point appear in the Applicant's submissions and in the first ground of the intended memorandum appeal attached to the affidavit. The Counsel concluded that the Court, in circumstances where the point of law is not properly framed, has discretion to frame properly or make modification of the proposed point of law.

Mr. Merinyo's stance was that, the Court's discretion to grant or not grant a certificate on point of law depends on the grounds stated in the affidavit. He was of the view that the Applicant's failure to state that the time limitation in the proposed point relates to the dispute lodged at the Ward Tribunal, amounts to deficiency of reasons. He stated that, the contradiction in paragraph 6(a) of the affidavit and the first ground in the attached intended memorandum of appeal, gives the benefit of doubt to the Respondent. He added that the Court cannot travel outside the affidavit and prayed for rejection of the application.

In rejoinder, Ms. Lawena submitted that the discrepancy does not go to the root of the application and the Court has powers, when certifying a point of law, to draw a point that it intends to certify to suit the circumstances of the case, relying on the case of **Harban Hajimosi and Another (supra)**.

Having heard the parties' rival submissions, the Court is enjoined to determine the proposed point "**whether the matter before the Court was hopelessly time barred and worth of consideration of the**

**Court"**, involves a point of law worth of determination by the Court of Appeal.

It is on record that, the suit was originally filed before the Ward Tribunal and the issue of time limitation has been a contention between the parties since then. Both the District Tribunal and the Court determined the issue of limitation of the dispute before the Ward Tribunal. Again, the first ground of the intended memorandum of appeal attached to the affidavit is clear that, the Applicant's intended complaint to the Court of Appeal is failure by the Court to find that the matter before the Ward Tribunal, was hopelessly time barred.

On the onset, I am not convinced with the argument of the learned Counsel for the Respondent that, the Applicant's error to mention 'Court' instead of the 'Ward Tribunal' amounts to deficiency of reasons warranting a rejection of the application. I am of the view that, the proposed point creates a point that, if the dispute before the Ward Tribunal was time barred, it would be wrong for the Court to determine an appeal based on a suit which was time barred. Consequently, I am inclined to agree with the Applicant's

Counsel that the error is not fatal. After all, the Court is empowered, in certifying a point of law, to frame, or approve and adopt a point framed by the Applicant as held in the case of **Harban Hajimosi and Another (supra)** on page 412 paragraph D of the decision.

Having made the above observations, I now move to determine whether the point proposed by the Applicant involves a point of law worth of determination by the Court of Appeal. It is on record that the issue of time limitation was discussed and determined by the District Tribunal and the Court. While the Applicant's position is that the dispute arose in 2007, the Respondent's position is that the dispute arose in 2010. The position of the District Tribunal is that the dispute arose in 2008 and that of the Court is that the dispute arose in 2010.

The duty of the Court to certify on points of law emanates from section 47(3) of the Land Disputes Courts Act, [Cap.216 R.E. 2019] which provides:

*"47(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."*

In considering whether the point proposed is a legal point, I am guided by the decision of the Court of Appeal in **Dorina N. Mkumbwa v. Edwin David Hamis, Civil Appeal 53 of 2017 [2018] TZCA 221**, to critically evaluate the point proposed based on the seriousness of the nature of present applications. In the decision, the Court of Appeal stated in the last paragraph of page 10 through to 11 that:

*'In land disputes, the High Court is the final court on matters of fact. The Legislature has taken this finality so seriously that it has, under subsections (1) and (2) of section 47 of Cap. 216 as amended by the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018 Act No. 8 of 2018 imposed on the intending appellant the statutory duty to obtain either leave or certificate on point of law before appealing to this Court. **It is therefore self-evident that applications for Certificates of the High Court on points of law are serious applications. Therefore, when the High Court receives applications to certify point of law, we expect Rulings showing serious 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 disputes originating from Ward Tribunal come to an expeditious end, preferably in the High Court.....'***  
*[Emphasis added]*

To ascertain the seriousness of the proposed point, I am persuaded by the three opposing positions as to when the dispute arose, that is, whether in 2007, 2008 or 2010. There is also evidence to suggest that it was due to unlawful acts of trespass committed by the Applicant that prompted the Respondent to abscond his activities in Tanga and return home to fight against the Respondent in 2010. This again, raises a question as to when did the Respondent become aware of the trespass that prompted him to return from Tanga in 2010. There is another important aspect to be considered, that is, the difference in reckoning the date when the dispute arose by the District Tribunal and the Court. This is irrespective of whether

or not, it would lead to a conclusion that the dispute was within the 12 years' period.

In my settled view, a point on time limitation is purely a legal issue that is apparent on the face of the record. I am of the finding that the point applied for certification before the Court is a point of law. It involves a legal point that would lead to a determination of the competency and legality of the Ward Tribunal to hear and determine the land dispute, and consequently the appeals before the District Tribunal and the Court. In the case of **Magige Nyamoyo Kisinja v. Merania Mapambo Machiwa, Civil Appeal No. 87/2018**, the Court of Appeal held in the first paragraph of page 7 that:

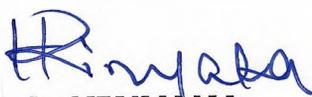
*'We must emphasize that the point to be certified by the High Court must be that of legal nature and significant to warrant the decision of the Court. It is not enough for a party in a third appeal, like in the instant appeal, to simply think the lower court is wrong in its decision to have his case heard by the Court of appeal. Matters of law which the Court is called upon to determine must transcend the interest of the immediate parties in the appeal.....'*

In the final analysis, I find that the issue applied for certification by the Court involves a point of law worth of determination by the Court of Appeal. However, guided by the decision in **Harban Hajimosi and Another (supra)** on the practice of the Court to frame, or approve and adopt a point of law, I hereby reframe the point of law to be whether the suit before the Ward Tribunal was time barred. Consequently, I certify that the issue **"whether the suit before the Ward Tribunal was time barred"** involves a point of law for determination by the Court of Appeal. I order that the costs of the application abide to the result of the intended appeal.

It is ordered accordingly.

**DATED** at **ARUSHA** this 13<sup>th</sup> day of November, 2023



  
**H. A. KINYAKA**

**JUDGE**

**13/11/2023**