

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

**MISC. CIVIL APPLICATION NO. 50 OF 2023**

*(C/F Misc. Land Application No. 77 of 2022 High Court of Tanzania at Arusha, Land application No. 105 of 2017, District Land and Housing Tribunal for Manyara at Babati, Original Land Case No. 2 of 2017, Magugu Ward Tribunal)*

**THOMAS STEPHANO BANGI ..... APPLICANT**

**VERSUS**

**YUSUPH OMARI MASKATI ..... RESPONDENT**

**RULING**

31<sup>st</sup> August & 17<sup>th</sup> November, 2023

**TIGANGA, J.**

In this application the applicant prays for this Court be to certify that, a point of law is involved and grant leave for the Applicant's intended appeal to the Court of Appeal of Tanzania which is intended to be filed against the decision of this Court, Gwae, J. in Misc. Land Application No. 77 of 2022 dated 24<sup>th</sup> March, 2023.

The application is by chamber summons made under section 5 (1)(c) and (2)(c) of the **Appellate Jurisdiction Act**, [Cap 141 R.E. 2019] (AJA) read together with Rule 45 (a) of the **Court of Appeal Rules**, 2019. The application is further supported by the applicant's affidavit which in the 7<sup>th</sup>

paragraph, he mentioned the grounds of the intended appeal which are in extenso but I will summarize them without distorting the meaning as hereunder;

1. That, the Judge erred in failing to find out that, the applicant's delay to appeal to the High Court of Tanzania at Arusha within prescribed time was caused by sufficient reason of his wife's illness.
2. That, the Judge erred in failing to find out that, there was illegality in the impugned decision of the tribunal below as the applicant was wrongly ordered to demolish his residential house which was built out of the suit land.
3. That, the Judge erred in denying an order to extend time to appeal out of time hence denying the applicant his constitutional right to appeal to the Court of Appeal.

The application was opposed through the counter affidavit sworn by the respondent in which he disputed the application on the ground that, this Court did not err in rejecting the applicant's prayer of extension of time on the ground that, there was no reasonable ground of the same.

A brief history leading to this application is to the effect that, the applicant was aggrieved by the decisions of Magugu Ward Tribunal and District Land and Housing Tribunal for Manyara at Babati claiming for three (3) acres of land which the Respondent trespassed onto. He decided to

appeal to this Court against such decisions but was out of time hence filed Misc. Land Application No. 77 of 2022 praying for the extension of time. This Court rejected his prayer on the ground that, there was no sufficient cause to warrant such extension of time. Aggrieved by the decision, he has filed this application to pursue his right further to the Apex Court of the Land.

During the hearing of the application which was by way of written submissions, the applicant was represented by Mr. Thomas Emanuel Kitundu whereas the respondent was represented by Mr. Abdallah Kilobwa, both learned Advocates.

Supporting the application, Mr. Kitundu submitted that, this is an omnibus application as the applicant has prayed for interconnected prayers of certification of points of law as well as leave to appeal to the Court of Appeal of Tanzania. He submitted that, for this Court to certify that there is a point of law involved, such issues must be purely on points of law worth determination by the Court of Appeal of Tanzania as emphasized in the case of **Mohamed Mohamed and Another vs Omary Khatib**, Civil Appeal No. 68 of 2011, CAT at Zanzibar.

The learned counsel submitted further that, for the Court to grant leave, it is duty-bound to ascertain whether the two elements have been met. These are first, the case should involve a substantial question of law worth consideration by the Court of Appeal. Secondly, the grounds raised must be issues of general importance or raise an arguable prima facie case necessitating the Court of Appeal's intervention. To cement this point, he cited the cases of **Nurbhai N. Rattansi vs. Ministry of Energy and Land Environment ad Hussein Rajabu Hirji** [2005] TLR 220 and **Ramadhani Mnyanga Said vs. Abdallah Salehe** [1996] TLR 74. According to him, this case fits the above criteria, hence a perfect case that needs the certification of the point for the Court of Appeal's attention. He prayed that this Court certify the above grounds and grant leave to appeal to the Court of Appeal of Tanzania.

Opposing the application, Mr. Kilobwa submitted that, there are no points of law raised that require the Court of Appeal's intervention. In his view, the fact that the applicant was sick and hence failed to appeal to this Court on time is a matter which needs evidence and the applicant failed to show tangible evidence to prove the same. He also argued that there is no

illegality of the impugned decision that needs to be challenged because the respondent was declared as the lawful owner of the suit land.

It was his further submission that, this Court did not err in rejecting the applicant's prayer for an extension of time because he failed to establish any tangible reason for the delay. He prayed that this application be dismissed with cost for want of merit.

In his rejoinder, Mr. Kitundu reiterated his earlier submission and maintained that this is a fit case that is worth consideration and intervention by the Court of Appeal.

Having considered the parties' affidavits and their rival submissions, the main issue for determination is whether the points framed by the applicant are points of law to be certified for consideration by the Court of Appeal and that he has given sufficient cause for this court to grant leave to appeal to the Court of Appeal of Tanzania.

It is trite principle that certification on points of law for appeal purposes is not automatic, this Court will always have to consider point (s) to be certified as to whether they are points of law or not. In this application, the points which this court is called upon to consider are contained in the 5<sup>th</sup>

paragraph of the applicant's affidavit. The practice of what this Court should do in an application of this nature was stated, among others, in the case of **Harban Hajimosi and Another vs. Omari Hilal Seif and Another** [2001] T.L.R. 412 which observed that;

*"Therefore, according to subsection 5 (2) (c), a certificate on point of law is necessary with appeals relating to matters originating in Primary Courts. The practice of the High Court is to frame such a point or to approve and adopt one framed by the intending Appellant to certify it to the Court of Appeal".*

In performing the above-prescribed duty, I will traverse through the applicant's proposed point for certification to determine if all of them qualify for certification purposes.

On the 1<sup>st</sup> and 3<sup>rd</sup> grounds, the applicant challenged this Court for finding that the applicant did not show sufficient cause for the delay in filing the appeal to this Court. According to him, the delay was caused by his wife's sickness, hence by this court rejecting the application, it denied him the right to be heard. In as long as I agree that the right to be heard is a fundamental right in adjudicating disputes between parties as held in the case of **Abbas Sherally and Another vs. Abdul Fazalboy**, Civil Application No. 33 of 2002, where the Court of Appeal of Tanzania observed that;

*"The right of a party to be heard before adverse action or decision is taken against such party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard because the violation is considered to be a breach of natural justice."*

And that, in the application at hand, the applicant intends to challenge this Court's decision before the Court of Appeal of Tanzania for not considering his wife's sickness as a sufficient reason for his delay in filing an appeal on time hence denied the right to be heard on his intended appeal, however, in dismissing this reason this Court had this to say;

*"More so, the applicant had not accounted his delay from when his wife was discharged 15<sup>th</sup> January, 2020 to 20<sup>th</sup> June, 2022 when he filed this application. Mere assertions that, the applicant was taking care of his sick wife for such a long period (more than two years) without making follow-ups to file either an appeal or an application of this nature immediately after the discharge of his wife, if so."*

Reading between the lines of the above excerpt, two things can apparently be ascertained, **one**, it suffices to find that, the point raised is not a pure point of law as it involves the evidence, and **two**, the applicant was given the right to be heard but he failed to prove the two years delay. It is, therefore, my considered opinion that this does not fit as a point of law

to be scrutinized by the Court of Appeal as the same failed because it requires evidence. These two grounds are therefore not certified.

On the 2<sup>nd</sup> ground, the applicant challenges this Court for not finding the illegality in the impugned decision as the District Tribunal ordered the demolition of the house built on the suit land. In the case of **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at Arusha (unreported), illegality has to be apparent on the face of record not that which will require scrutiny of the proceedings and long-drawn arguments.

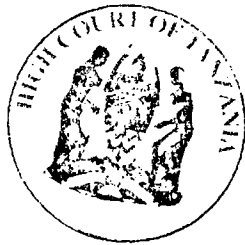
The record shows that, when the applicant claims the house so demolished was part of the suit land when he sold it, the respondent claimed that the applicant out of his own volition and amid the dispute decided to build the said house in 2015. This also is not by its nature the point of law worthy for consideration by the Court of Appeal, and further in my view, does not constitute illegality as it is a matter of facts and evidence that needs one to dig deep to find the truth. In the circumstances, I do not certify it as a point of law worth consideration by the Court of Appeal.



In the upshot, the applicant's application is hereby dismissed with cost for want of merit.

It is accordingly ordered.

**DATED** and delivered at **ARUSHA** this 17<sup>th</sup> day of November 2023



  
**J.C. TIGANGA**  
**JUDGE**