

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
[IN THE SUB-REGISTRY OF ARUSHA]**

**AT ARUSHA**

**MISC CRIMINAL APPLICATION NO. 22 OF 2023**

*(C/F High Court (PC) Criminal Appeal No. 09 of 2022, originating from Karatu District Court, Criminal Appeal No. 3 of 2022 which originated from the Karatu Primary Court, Criminal Case No. 581 of 2021)*

**TITI BURA.....1<sup>ST</sup> APPLICANT**  
**TSAQWA BURA.....2<sup>ND</sup> APPLICANT**  
**EMILIANA BURA.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**LAURENT WILBROD..... RESPONDENT**

**RULING**

29<sup>th</sup> December 2023 & 23<sup>rd</sup> February 2024

**TIGANGA, J**

This is an application for certification of the point of law for the applicant to appeal to the Court of Appeal of Tanzania against the decision of this Court, Philip, J in PC Criminal Appeal No. 09 of 2022. It was filed by the chamber summons made under Section 5 (2) (c) of the Appellate Jurisdiction Act [Cap 141 R.E. 2019] and supported by the affidavit sworn by the applicants herein. The affidavit traced the background of the application and pointed out about eight points of law that are recommended to be certified by this Court.



The background of the application as can be deciphered from the affidavit and the record is that, initially, the applicants herein were charged before the Primary Court of Karatu, at Karatu for an offence of malicious damage to property. After a full trial, they were all acquitted by that court. The respondent was dissatisfied, he appealed to the District Court where the appeal was allowed, consequent to that, the applicants were convicted and ordered to compensate the respondent to Tshs. 1,212,500/=.

Following that decision the appellant filed the appeal to the High Court Hon. Philip, J who ultimately dismissed the appeal with costs. Following that decision, the applicants filed the application at hand which advanced eight points of law for certification by this Court for determination by the Court of Appeal.

- i) That, the High Court erred in law to order costs in Criminal cases.
- ii) That, the High Court erred in law to maintain the District Court order for compensation after expunging exhibit C1 from the records.
- iii) That, the High Court erred in law for failure to draw a negative inference against the respondent's failure to bring an important witness.

- iv) That, the High Court erred in law to ignore the material contradiction in the prosecution case unproved.
- v) That, the High Court erred in law to maintain conviction on malicious damage to the property while the alleged damaged property was in dispute as to ownership as shown by the appellant in cross-examination.
- vi) That, the High Court erred in law for failure to rule against the District Court's introduction of new facts.
- vii) That, the High Court erred in law to reject on technicalities the irregularity on the charge which goes to the root of the case and the jurisdiction.
- viii) That, the High Court erred in law for it did not properly determine the appeal by assigning no good reasons for the decisions reached.

The application was opposed by the Respondent who filed a counter affidavit that the matter stated in paragraph 4 (i) – (viii) is not a pure point of law worth for the grant of certificate but factual matters of evidence. Lastly, he said the affidavit by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> applicants were not served to the Respondent therefore the Respondents failed to take necessary steps.





Hearing of this application was conducted by way of written submissions, which were filed as ordered. In the submission in chief the applicant reminded the court of the principle which I find to be a correct position of law, that in cases originating from the Primary Courts, an appeal to the Court of Appeal can be preferred after the appellant has applied to the High Court for certification of point of law and the practice is that either the High Court frames such a point or approve and adopt one framed by the intending appellant too certify it to the Court of appeal for consideration. See **Harban Hajimosi and Another Vs Omary Hilal Seif and Another** (2001) TLR 409.

In that exercise of granting a certificate on point of law to appeal to the Court of Appeal, the High Court must satisfy itself that, the applicant has established that the intended appeal involves a serious point of law which requires the attention of the Court of Appeal. He submitted that, looking at the affidavit filed in support of the application the proposed points merits to be certified as points of law for consideration by the Court of Appeal.

Submitting in support of the first proposed point he said in practice costs are issued in Civil cases, as opposed to Criminal cases, but in this case, the Court granted costs in Criminal cases. Also, the High Court failed




to consider that the complainant failed to bring material witnesses to prove his case. Further to that, he submitted that the evidence was full of contradiction which must have prejudiced the applicant, but the High Court failed to consider those facts.

Also, he said the High Court failed to fault the District Court on the issue of who was the legal owner of the properties alleged to be damaged by disregarding the fact that the District Court introduced the new facts that did not transpire during the trial. He thus prayed for the High Court to certify the points of law so that the applicants could appeal to the Court of Appeal.

The Respondent opposed the submissions in chief by first reminding this court of the position of the law as propounded in the case of **Dorina M. Mkumwa vs Edwin David Hamis**, Civil Appeal No. 57/2017 CAT- that the Court while certifying the points of law, should seriously evaluate what is proposed as the points of law to be points of law before certifying the same to the court of appeal. The High Court is not expected to act as a critical conduit to allow whatsoever the intending appellant proposes as a point of law to be perfunctorily forwarded to the Court as a point of law.

He submitted that the proposed points are not points of law but factual issues therefore the same falls short of being certified as such.



Regarding the 1<sup>st</sup> issue, he drew this court's attention to two procedural laws that are regulation 5(1)(b) of the **Primary Courts Criminal Procedure Code**, 3<sup>rd</sup> schedule to the **Magistrates Courts Act** [Cap. 11 R.E 2019] and section 345(1) of the **Criminal Procedure Act**. [Cap. 20 R.E 2022] that provides for the same remedy in addition to any other sentence. He also reminded the Court that the reminding party must be reimbursed for cost at the discretion of the Court and cited the case of **Gidbhage Layda vs Emmanuel Bariye & others**, Misc. Criminal Application No. 64 of 2022. HC Bade J.

On the issues of ignoring material contradiction and regarding the issues of the charge sheet the issue of failure to draw negative inference against the respondent's failure to bring important witness. On the issue of the ownership of the damaged property as well as the issue of the district Court raising new facts. And failure to assign good reasons for the decision reached. He said all of these are points of fact.

After considering the submissions, and having scrutinized the points proposed by the applicant, I find most of them to be factual as opposed to legal. However, I find only two points out of eight to be points of law and thus certify them as points of law worthy of consideration by the Court of Appeal.





- i. Whether the Courts can order costs in criminal cases.
- ii. Whether it was proper for the High Court to ignore the fact that the District Court introduced new facts and decided it without affording the parties the right to be heard.

Having framed them, I thus certify them as the points of law worthy of consideration by the Court of Appeal.

It is accordingly ordered.

**DATED** and delivered at **ARUSHA** this 23<sup>rd</sup> February 2024.



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

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