

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB - REGISTRY OF MWANZA
AT MWANZA

CIVIL APPLICATION NO. 130 OF 2020

(Arising from PC Civil Appeal No.13/2022 decided by Hon. Mnyukwa, J on 26.10.2022)

TEOJENI LUZIGAMANZI-----APPLICANT

VERSUS

MTAGA TEOJENI-----RESPONDENT

RULING

Feb. 16th & 20th, 2023

Morris, J

The applicant and respondent are father and son respectively. The latter filed a suit before the primary court claiming from his father 40 cows. According to the record, the son allegedly gave or left with his father 7 herds of cattle for years. On his return, he demanded for 40 livestock on the claim that the 7-left cattle had reproduced to such number. He was partly successful at the trial Primary Court. He was awarded a half of his claim. That is, the primary court ruled that he was entitled to 20 herds of cattle or Tshs. 12m/- in lieu thereof.

Aggrieved, the appellant appealed to the District Court. He did not make it a success. The first appellate court confirmed the primary court's decision. Undeterred, the applicant appealed to this Court. Not good for him, the Court confirmed the concurrent findings of the two courts below. He is now processing to knock doors of the Court of Appeal. Hence, the present application so as to obtain the certificate as to the point of law, as required by the law.

The application is supported by the affidavit of Gibson R. Ishengoma, the applicant's counsel. Under paragraph 7 of the said affidavit, the deponent is stating that the applicant intends the Court of Appeal to adjudicate and determine the following points, which to him, are of law. Thus:

1. That failure to prove specific amount/claim as pleaded is fatal, at the trial court from awarding the sum (sic) of cows by taking into consideration the number of cows and the period of time.
2. The burden of proof lies to the plaintiff/claimant and the defendant failure to defend his case rather than the strongness of the evidence adduced by the claimant.

The respondent did not file any counter affidavit or defend the application. Not even after being given the necessary Court's leave to do so. When the matter was called for hearing, the applicant was represented by Advocate Gibson Ishengoma. The respondent and/or his counsel were absent. Consequently, the application was heard on *ex-parte* basis. The applicant's counsel prayed to adopt the affidavit as part of his submissions. Further, he argued that applicant applies for the certificate of points of law in line with paragraph 7 of the affidavit.

Having gone through the affidavit and record before me, the Court is required to determine whether or not the applicant is disclosing point(s) of law worth the Court of Appeal's time and attention. As introduced above, the applicant is intending to commence the third appeal on the grounds in the affidavit. Hence, I am invited to analyze the subject grounds with the view to finding out if they contain in them any matters of law, in strict sense. As it was discussed in ***Mariam Othman Matekele v Nyacheri Joseph Mwangwa***, HC Misc. Civil Application No. 139/2021 (unreported):

"Strictly speaking, a point of law is a matter involving the application or interpretation of legal principles or statutes. It

is the determination of what the law is and how it is applied to the facts in the case."

In view of the foregoing, a point of law or points of law pertain to matters other than facts or evidence. The justification is not too far to find. In the third appeals, it is a settled position of law that, facts and/or evidence would have been adequately and competently dealt with by the courts below the Court of Appeal.

Going through both proposed grounds, the Court is of the view that the applicant wishes to engage the apex judicial body to yet consider facts and evidence contrary to the law. In a paraphrased form, the first ground involves determination about the number of herds of cattle and the time within which such number can be attained through reproduction of the said livestock. To conclusively determine such aspect, it is obvious that the Court of Appeal will be required to go through evidence of parties at the trial and/or first appellate court.

The second ground is equally directed to the parties' evidence. In its specific couching, the applicant will seek the apex court's interpretation of two aspects: the burden of proof and liability on the part of defence where the burden is not discharged. However, for this aspects to have

valuable objective in this matter (and prospective appeal); the court will delve into, to use the applicant's coinage; "the strongness of the evidence adduced by the claimant".

The Court of Appeal, thus, will not possibly determine the foregoing interrogation fully without going through factual and evidential records of the subordinate trial and first appellate courts. Further, going through this Court's decision in PC Civil Appeal No. 13 of 2022 involving the parties herein, I have not found any alleged *ratio decidendi* in respect of onus of proof or parties' liability. To say the least; none of the advanced grounds constitutes, even by glimmer of imagination, a point of law as required by the already-set standards in this regard.

In ***Yakobo Magoiga Gichere v Penina Yusuph*** CAT-Mwanza, Civ. Appeal No.55 of 2017 (unreported); the importance of the Certificate sought herein in entire administration of justice was reiterated. Though, it was a land case, its holding is relevant hereof. It was held that:

"Certificate from the High Court is mandatory for appeals originating from Ward Tribunals and should not be taken perfunctorily or lightly by the certifying High Court and the parties to the impending appeal. The certificate of the High Court predicates the jurisdiction of the court in land matters

... To underscore the significance of the certificate, we may add that where the High Court has certified points of law in appeals originating from Ward Tribunals, the grounds of appeal filed in the court must conform to the points of law which the High Court has certified."

The High Court is, in view of the foregoing excerpt, reminded to pay keen interest before issuing the subject certificate. About four (4) reasons for the keenness are apparent. **First**, the certificate on point of law is issued as a matter of compulsory requirement. An appeal without it being attached becomes incompetent. [**Idi Tanu v Abilo Nyamsangya**, CAT-Mwanza, Civ. Appeal No. 461 of 2020 (unreported)]. **Second**, it is a jurisdictional issue. The Court of Appeal's powers to adjudicate on matters constituting a third appeal cannot be invoked unless the certificate is attached.

Third, the certificate operates as a benchmark for the ground(s) of appeal. Every third appeal, such as the one envisaged by the applicant above, must rhyme the grounds thereof with the certificate [**Rashid Rashidi Mniposa v Lyeha Jamali Msoi**, CAT-Mtwara, Civ. Appeal No. 15 of 2022 (unreported)]. **Four**, the subject appeal must only contain points of law because matters of facts are taken to have been ably dealt

with by the three different courts below [***Hezron M. Nyachiya v Tanzania of Industrial and Commercial Workers and Another***, Civil Appeal No, 79 of 2001 (unreported)].

The above discussion in perspectives, the raised issue herein is determined against the applicant. Consequently, the application is found to lack merit and should be, as I hereby order, dismissed. Each party to bear own costs.

It is accordingly ordered.



C.K.K. Morris
Judge
February 21st, 2023

Ruling delivered in absence of all parties.

C.K.K. Morris
Judge
February 21st, 2023