THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA SUB-REGISTRY

AT MBEYA

MISC. CIVIL APPLICATION NO. 21 OF 2023

(Arising from the High Court of Tanzania at Mbeya in PC. Civil Appeal No. 5 of 2022 and Misc. Civil Application No. 35 of 2022, Originating from the District Court of Mbozi at Vwawa, in Civil Appeal No. 9 of 2021 in Original Civil Case No. 13 of 2021 of the Primary Court of Mbozi District at Mlowo)

JOYCE NZUNDA.....APPLICANT

VERSUS

MERU AGRO TOURS & CONSULTANTS CO. LTD.....RESPONDENT

RULING

Date of Last Order: 13/12/2023
Date of Ruling: 15/03/2024

NDUNGURU, J.

JOYCE NZUNDA (the applicant) is seeking the certificate of this Court that points of law are involved in the intended appeal to the Court of Appeal of Tanzania. She filed the application under section 5 (2) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E 2019 and Rule 46 (1) of Tanzania Court of Appeal Rules, 2019. On the other side, MERU AGRO TOURS & CONSULTANTS CO. LTD (the respondent) through one Idris Muhidin Msemo, advocate, opposed the application.

A brief background of the case is that; In the original case, that is Civil Case No. 13 of 2021 decided by the Primary Court of Mbozi District at Mlowo, the respondent had successfully sued the appellant for an outstanding debt of Tshs. 2,834,000/= accrued from the business which the two involved in. The decision of the Primary Court was challenged by the applicant who successfully appealed to the District Court of Mbozi by reducing the amount of the outstanding debit at the tune of Tshs. 1,665,000/=.

The decision of the District Court did not amuse the the respondent. She thus, successfully appealed to this Court vide PC Civil Appeal No. 5 of 2022. This Court however, confirmed neither decision of the two lower courts. It substituted both, the amount of Tshs. 2,840,000/= and Tshs 1,665,000/= awarded by the Primary and District Court respectively, with Tshs. 2,640,000/=. Feeling still aggrieved, the applicant intends to appeal to the Court of Appeal. She filed the application under section 5 (2) (c) of the Appellate Jurisdiction Act, which requires to obtain a certificate that a point of law is involved in the intended appeal. It stipulates that-

> *"5 (2) (c)- no appeal shall lie against any decision or order of the High Court in any proceedings under*

Head (c) of Part III of the Magistrates' Courts Act unless ***the High Court certifies that a point of law is involved in the decision or order;"*** (emphasis added).

The duty of this Court under the above cited law is to scrutinize or critically consider whether there are points of law to be dealt by the Court of Appeal. This duty was pronounced by the Court of Appeal (CAT) in **Dorina N. Mkumbwa vs Edwin David Hamis** Civil Appl. No.53/2017 CAT (unreported), that:

"... It is therefore self-evident that applications for Certificates of the High Court on points of law are serious applications. Therefore, when 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..."

On the above guidance, the issue for consideration is whether there is point of law to be considered by the Court of Appeal.

The application was disposed of by way of written submissions. Whereas the applicant was unrepresented, the respondent was represented by Idris Muhidin Msemo, learned advocate.

The applicant deponed and submitted that there are points of law to be considered by the Court of Appeal. the points to be certified are contained in paragraphs 3 to 6 of the applicants affidavit. Which are reproduced as follows:

3. *That, the Honorable appellate court Judge erred in law and fact in deciding in favour of the respondent while the respondent was not proved the(sic) his allegation according to the standard in civil cases.*
4. *That, the appellate court Judge erred in law and fact by upheld (sic) the "Deed of settlement" of the parties which was incurable defective.*
5. *That, the Honourable appellate court Judge erred in law and fact by ignoring the evidence adduced by the applicant during hearing.*

6. *That the honourable appellate Judge erred in law by upheld(sic) defective figures which was core disputes of the parties.*

On the first point, the applicant argued that there was error when this Court upheld the evidence of the respondent which was weak. That had it considered receipts of payment of debts would have not decided the way it did, the decision which infringes right of the applicant. Thus, that that error deserves to be considered on intended appeal.

As to the content in para 4 of the affidavit, she stated that this court erred to uphold incurable deed of settlement which was defective; for it had different figure of the debt, it had no page numbers and was not signed by both parties at each page which would lender misplacement of some document.

As to the point raised in para 5 of the affidavit, the applicant made arguments same as it was in the 1st point under para 3.

As to the point under para 6 of the affidavit, the applicant claimed that this Court reached to the conclusion which was different from both lower courts. That, the figure of Tshs. 2,640,000/= was unknow where it came from. According to the applicant, all points, she has

demonstrated are worth for this court to certify as points of law for her to file an appeal to the Court of Appeal.

In response, Mr. Msemo briefly submitted that no point of law was raised, rather are matters of facts. He contends that, the applicant complaints are based on insufficient evidence to support the decision of this Court. Mr. Msemo, relying on the Court of Appeal of Tanzania decision in **Agness Severin vs Mussa Mdoe** (1989) TLR 164, was emphatic that certificate on point of law should be clearly demonstrated than being complaint on insufficient evidence which is a matter of facts. He thus, urged this Court dismiss the application with costs.

I have considered the applicant's affidavit in support of the application. I have also considered the parties' submissions. Now, it is time to resolve the already posed issue, that is, whether there is point of law to be considered by the Court of Appeal.

The points raised by the applicant as the bases for certificate can conveniently be summarised as; **one,** the case was not proved at the standard of probability, **two,** the court relied on a defective 'deed of settlement' for it had different figure of the debt, no page numbers and was not signed by both parties at each page, **three,** the court ignored

evidence adduced and **four,** the court come at the defective figure of the amount of debt, the subject of the parties' dispute.

The applicant's grievances are self-explanatory, they need no any rule of interpretation to decide whether are points of law or matters of facts. The applicant's intention is non-other than seeking for re-visit of the evidence on record. The task she prefers to be furnished by the Court of Appeal is contrary to what the law on certificate of point of law required.

My take was underlined by the Court of Appeal in the case of **Agnes Severini vs Mussa Mdoe** [1989] TLR 164 (TZCA) where it observed that:

> *"We wish to observe at the outset that this was an unsatisfactory way of certifying a point of law. That certificate is capable of two interpretations. It could mean posing the question* ***whether there was any evidence at all to support the concurrent decisions of the courts below.*** *It could equally mean to ask the question* ***whether the evidence as adduced was sufficient to support and justify those decisions.*** *How, this distinction is imported. The*

question whether there was any evidence at all to support the decision is a question of law which can properly be certified for the opinion of this court. But whether the evidence as adduced was sufficient to support the decision is a question of fact which could not properly be the subject of a certificate for the opinion of this court. For, this court takes the view that if there was some evidence on which the courts below could have arrived at the decision they did, then this court will not interfere, even though had this court itself tried the case it might have come to a different decision. ***Those who are called upon to certify points of law should, therefore, keep this distinction in mind in order to ensure that only the correct questions are certified for the opinion of this court.****" (emphasis supplied).*

So guided, I am of the considered view that, the points as above, are not points of law which require the attention of the Court of Appeal. On the alleged defective deed of settlement, it sounds like point of law. Nonetheless, the applicant has disclosed what she thinks made the deed

defective, those are absence of page number, absence of signature at each page, and that it contained different figure of amount of the debt. Those are not points of law worth for certification. Fortunately, the same complaint was extensively delt by this court in the impugned judgment.

In the end, I find the applicant has not raised any point of law worth to be considered by the Court of Appeal. I hereby dismiss the application with no order as to costs.

Ordered accordingly.

D.B. NDUNGURU,

JUDGE

15/03/2024