

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

AT ARUSHA

MISC. CIVIL APPLICATION NO. 74 OF 2023

(C/F Land Appeal No. 34 of 2022 High Court of the United Republic of Tanzania, Arusha District
Registry, Land Appeal No. 57 of 2021 from District Land and Housing Tribunal for Arusha, Originated
from Complaint No. 2 of 2021 from Oltrument Ward Tribunal)

WILBART MEREYEKI.....APPLICANT

Versus

WILFRED MEREYAKI.....RESPONDENT

RULING

28th February & 28th March 2024

TIGANGA, J.

This is an application for a certificate on points of law filed by the applicant Wilbart Mereyeki. The application is made under Section 47 (3) of the Land Disputes Courts Act, [Cap. 216 R.E.2019] and supported by the affidavit of the applicant. The application has not been opposed by the respondent.

The brief facts giving rise to this application as can be deciphered from the record and affidavit filed in support of this application are the following. The Applicant Wilbart Mereyeki, was the Applicant in Oltrument Ward Tribunal vide Application No. 2 of 2021, before the above-named Ward Tribunal before which the applicant was declared the lawful owner of the suit land. Disgruntled by the decision, the Respondent successfully appealed against the decision of the trial tribunal to the District Land and Housing Tribunal (DLHT) for Arusha, vide Land Appeal No. 57 of 2021 where his appeal was dismissed for wants of merits.

Being aggrieved by the decision of DLHT, the Applicant appealed against the decision to this Court, Hon. Mwaseba, J vide Misc. Land Appeal No. 34 of 2022 where his appeal was dismissed and the decision of DLHT in Land Appeal No. 57 of 2021 was upheld. Again, aggrieved by the decision of this court in Misc. Land Appeal No. 34 of 2022, as a matter of law, he lodged an application for certification of points of law for consideration by the Court of Appeal in the intended appeal, hence this application.

When this application was called for hearing, on the 29th day of September 2023 the respondent, through Mr. Mwanili Mahimbali, learned Advocate, informed this Court, that initially, he had no intention to oppose the application; but upon reading the application, he discovered that the application was filed out of time. He then orally raised a Notice of Preliminary Objection to the effect that the application is time barred. With the leave of the court, the application was heard by way of written submissions. Upon full hearing of the preliminary objection, the court overruled it and ordered the matter to be heard on merits.

When parties convened for a hearing of the application on merits, Mr. Mwanili Mahimbali, learned counsel for the respondent, reminded the court of his stand that he was not objecting to the merit of the application. He urged the court to continue granting the application. On the other side, the unrepresented applicant prayed for his two points to be certified. The two points which the applicant asked the court to certify are as follows.

- i. That the Judge erred in law and fact by holding that the deemed right of occupancy by the applicant is inferior to the certificate of Title held by the Respondent to prove his ownership of the disputed land.
- ii. That the Judge erred in law and fact by holding that the certificate by the respondent applies beyond the boundary's description within the certificate of title

Having examined the two points raised, I find the first one to be a pure point of law that deserves the certification of this court. Having so satisfied myself, I hereby certify the first point for determination by the court of appeal. Regarding the second point, I find it to be a factual point. It is not a point of law worth certification; therefore, it cannot be certified.


That said and done, I hereby certify one point of law for consideration by the Court of Appeal. That is

"Whether the judge was correct in holding that the deemed right of occupancy by the applicant is inferior to the certificate of Title held by the Respondent to prove his ownership of the disputed land."

It is accordingly Ordered.

DATED and delivered at **ARUSHA** this 28th day of March 2024




J. C. TIGANGA
JUDGE