

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPLICATION No. 81 OF 2023

REFERENCE NO. 20231010000532116

(Originated from the High Court of Tanzania Musoma Sub registry in Misc. Land Appeal 28 of 2022 and from the decision in District Land and Housing Tribunal for Mara at Musoma in Land Appeal No. 118 of 2021 Originating from Kenyamonta Ward Tribunal in Land Dispute No. 63 of 2021)

MAGANZO MACHUMBE..... APPLICANT

VERSUS

MOHERE MORATE..... RESPONDENT

RULING

12th & 18th April, 2024

M. L. KOMBA, J.:

Applicant has filed chamber summons under section 47(3) of the Land Disputes Courts Act, Cap 216 R.E 2019 asking this court to certify the presence of point of law which has to involve the attention of the Court of Appeal. Application is supported by affidavit sworn by the applicant.

A brief background of the matter read as picked from the record is that; respondent herein via Land suit No. 63 of 2021 sued the appellant in Kenyamonta Ward Tribunal for her action of uprooting sisal plants which were demarcation of their land as neighbours. Respondent bought the said

land in 2004 and has been utilizing it since then to 2018 when the dispute arose. The Kenyamonta Ward Tribunal and District Land and Housing Tribunal for Mara at Musoma decided in favour of the respondent. Appellant utilized his right to second bite at the High Court via Misc. Land Appeal 28 of 2022 where the decision of the lower tribunals was upheld. Still unsatisfied and noting the matter originated from the Ward tribunal, applicant confronted this court with his prayer for certification that there is point of law involved as shown at paragraph 5 thus;

- a) Whether it was proper the vendor as joint owner could pass title of the suit premises to the purchaser without consent of the other joint owner, his wife.*
- b) Whether it was proper for the High Court to affirm the two lower tribunals' decisions while the sale agreement of the suit premises was of no legal effect.*
- c) Whether the sale agreement between Mr. Nyamako Maitari and the respondent/Mohere Morate was not fatal.*
- d) Whether it was proper for the High Court to pronounce or declare one of the parties is a rightful owner on the uncertain land while the respondent faults on descriptions of the disputed land accordance Regulation 3 (2) (b) of the Land Disputes Court (the District Land and Housing Tribunal) Regulations 2003 GN No. 174 of 2003 (The Regulations).*
- e) Whether it was proper for the ward tribunal members consulted a total of twenty two (22) neighbors surrounding the land*

dispute who were not previously called as witnesses during the hearing before the Ward Tribunal.

- f) *Whether it was proper for the High Court to holding that the respondent had proved its case on a balance of probabilities as required by section 3 (2) (b) of the evidence act. (Cap 6 RE 2019).*

During hearing, the applicant stood solo without ant representation while the respondent had legal service of Ms. Mary Joakim, an advocate.

It was the applicant who started to prosecute his application by praying this court to adopt her affidavit. She further submitted that she was not aware of the sale transaction and therefore the contract of sale was void. She supported her application with the decision in **Zakaria Barie Bura vs Theresia Maria John Mubiri**, Civil Appeal No. 40 of 1993 (Arusha). She finally prayed her application to be allowed.

Ms. Joakim resisted the application as there is no point of law in affidavit. Analysing paragraph 5 of the affidavit on the 1st issue 5(a) on sale matrimonial property without consent of the other party she submitted that it is a matter of facts and not a law as when the matter was in Kenyamonta Ward Tribunal there was no prove of joint ownership of the disputed land by applicant and it was not raised at any

Tribunal neither at the High Court. For her the issue cannot be raised at this level.

While elaborating the fact she said it has to be known that respondent bought the land from Nyamako Maitali and not from the husband of the applicant. In 1994 applicant husband sold the land to Maitali who utilized the land since 1994 to the year 2004 when was sold to respondent. During all that time the applicant was aware that the land was sold and she did not initiate any legal proceedings. She said she didn't find a legal point to certify as the respondent is the second owner and bonafide purchaser who is protected by law as he gave consideration when buying the land. Counsel urges me to read **Suzana Kesi Warioba vs Shida Dalawa**, Civil Appeal No. 44 of 2017 CAT at Mwanza the court held that innocent purchaser should not be disturbed.

Counsel combined issues in 5 (b) and (c) on decision of the High Court and sale. It was her submission that issues should not be considered as applicant failed to show how the contract is said to have no legal effect. She clarified that legality of the contract is provided at section 10 of the Law of Contract Act, Cap 345. In the case at hand, she said there was free consent, parties were competent, it was lawful object and there was consideration. Counsel warned this court not to act as a conduit and

certify everything brought before it insisting that the first contract survived for 9 years and the second contract survived for 15 years where respondent enjoyed the land peaceful.

Arguing for paragraph 5(d) she submitted that the issue is not subjected to Ward Tribunal sphere as section 15 of the Ward Tribunal Act, the tribunal is not bound by rule of procedure or evidence and under section 11 (1) is to the effect that how complains are handled to the tribunal. The section 3 (2) (b) as used by applicant is related to District Land and Housing Tribunal (DLHT) when dealing with land matter and not Ward tribunal where the matter at hand originated.

In paragraph 5 (e) she submitted that applicant did not explain how the witness cause miscarriage of justice while insisting that Ward Tribunals are not bound by rules of procedure so far as all witnesses at the Ward Tribunal were recorded and featured in proceedings, she explained that those who were complained were not featured in proceedings. On this issue counsel insisted that section 45 of Cap 216 protect decision of the Tribunal unless that error cause miscarriage of justice and supplied the case of **Jacob Magoige Gichere vs Penina Yusuf**, Civil Appeal 55 of 2017 where the court insisted that courts should not be bound by

rules of procedures. She said the issue has no quality to be certified as it is the matter of evidence.

The last 5 (f) point, applicant did not show how High court decision denied her rights as what is on record the High Court confirmed that the respondent had heavier evidence than applicant as he owned the land for many years before he was disturbed. Counsel prayed this court not to certify as all points has no value to be called points of law and pray the application to be dismissed with costs.

Having considered the application's records and the submission advanced by each party, the duty of this Court lies to consider whether or not this application is meritorious.

It is the trite that if a person is not satisfied by the decision of one court to appeal to the higher court. As this application traces its root on land disputes, section 47(3) clearly provides for the right to appeal to the court of appeal upon proof of existence of point of law;

47(3) Where an appeal to the Court of Appeal originates from the Ward Tribunal, the appellant shall be required to seek for the Certificate from the High Court certifying that there is point of law involved in the appeal.

First of all, I wish to state from the onset that this is an application for certification on point of law so that applicant may appeal to the Court of

Appeal and not an appeal. In certifying, there must be real point of law worth to be addressed by the Court of Appeal.

The first issue 5(a) is on consent of the joint owner of the suit premise. In her submission applicant informed this court he was not aware of the sale. Records show that there was matrimonial dispute between the applicant and deceased who was the owner of the disputed land which forced the applicant to run away. It is not known when she run away there was divorce or otherwise and it was not stated if applicant was given her share on the matrimonial property. For the applicant to establish that she was a wife and the disputed land was matrimonial and she had not given her share when she run away needs evidence and not a point of law. The case of **Zakaria Barie Bura vs Theresia Maria John Mubiri** (supra) is distinguishable in the sense that the property in the said suit was jointly acquired and there was a joint offer over the land. In the case at hand, it is not proved if the property was matrimonial by the time of sell as analyzed.

Further the issue of illegality of the sale agreement in 5(b) and (c) was not elaborative, however as analysed the issue of consent, deceased sold his land and there was consideration and the applicant was aware of the sale and new owner. The time lapse from sale to when the

dispute arise is enough to leave the lawful purchaser to peacefully enjoys the lands which he lawfully purchased. See **Suzana Kesi Warioba vs Shida Dalawa**, (supra) and **I. S Mwanawina & John A. Chale vs Chiku Mapunda**, Land Appeal No. 53 of 2018. The two issues cannot be certified as points to be forwarded to the higher court.

At paragraph 5 (d) about the size of the disputed land was not part of the appeal at the high court, however, as submitted by the counsel for the respondent, the matter started at ward tribunal and when visited the locus in quo size and boundaries of disputed land were ascertained enough to warrant execution. However, ward tribunal has different laws and procedure in entertaining land issues and is not bound by the cited regulations. Further on the issue of visitation of the locus in quo as listed, the ward tribunal recorded the proceedings while visited the locus in quo and sketch map was prepared. The issue that who give clarifications or elaboration while at the *locus* is a matter of evidence and not a law. So far as the sketch map was drawn and minutes were prepared, I find no need to fault members of the tribunal on visitation hence no point of law worth certification.

On the decision by the Hight Court which based on section 3(2) (b) of the Evidence Act, that the respondent has proved his case to the

balance of probability, Hon Judge in his decision at page 8 explained that he read record and find respondent had better evidence at ward tribunal where it was elaborated that respondent bought the land from Nyamako. That was the base of citing the Evidence Act. This is point of law; however, it doesn't need clarification by the upper court as the Hon. Judge uphold what was decided by the 1st appellate tribunal as indicated at page 13 that interference of lower tribunal decision may be done when there is a compelling reason and there was none.

I didn't find anything disturbing to necessitate the Court of Appeal's intervention with regards to the applicant's complaint as some of issues are matter of evidence and others were handled as per law. I am mindful that point to certify must be of legal nature and of the public interest. See **Magige Nyamoyo Kisanja vs Merania Mambo Machiwa**, Civil Appeal No. 87 of 2018 and **Dorina Mkumbwa vs David Hamis**, Civil Appeal No. 53 of 2017.

In view of the discussion above, the applicant has no legal point(s) worth to be forwarded to the Court of Appeal as the third ladder. In the circumstances, I am constrained to, as I hereby do, dismiss this application with costs.

DATED at **MUSOMA** this 18th day of April, 2024.



MK
M. L. KOMBA
Judge

Ruling delivered in chamber in the presence of respondent who appeared in person and in the absence of applicant who had notice of the date of decision on the date when the matter was placed for hearing.

MK
M. L. KOMBA
Judge

18th April, 2024