

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

MISC. CIVIL APPLICATION NO. 27687 OF 2023

(Arising from Misc. Civil Application No. 136 of 2023 in the High Court of Tanzania at Mwanza; the same arising from the Judgment of the High Court at Mwanza in PC Civil Appeal No. 67/2017; arising from Musoma District Court in Civil Appeal No. 9 of 2017; originating from Musoma Urban Primary Court in Civil Case No. 195 of 2016)

WAKIBARA WAMBURA.....APPLICANT

VERSUS

CONSOLATA CHACHA.....RESPONDENT

RULING

20th February & 20th February, 2024.

Kilekamajenga, J.

The dispute at hand originates from the decision of Musoma Urban Primary Court in civil case No. 195 of 2016. In the original case, the applicant sued the respondent for tortious acts and won the case. The respondent unsuccessfully appealed to the District Court of Musoma vide Civil Appeal No. 9 of 2017. Still unhappy, she approached this court of justice through PC Civil Appeal No. 67 of 2017 where the appeal was allowed and the proceedings of the District Court was quashed and the matter was remitted back to the District Court hearing *de novo* before another magistrate. This court proceeded further to order costs in favour of the respondent. As a result, the applicant did not return to the District Court as



directed by this court. Later, the respondent applied for bill of costs vide Taxation Cause No. 21 of 2018 and the applicant was ordered to pay Tshs. 4,460,000/=. The applicant lodged an application for reference before this court to challenge the order of the taxing officer. This court reduced the costs to Tshs. 4,245,000/=. In between, the applicant lodged other several applications before filing the instant application.

In this application, the applicant is seeking the following orders:

- 1. That, the Honourable Court be pleased to grant certificate that there is point of law involved in the appeal to the Court of Appeal of Tanzania.*
- 2. Costs will in the course.*

The application was placed before me for hearing. The applicant was absent though represented by the learned advocate, Mr. Musa Nyamwero whereas the respondent appeared in person and without any representation. The respondent opted not to file any counter affidavit and allowed the court to grant justice in this application. The counsel for the applicant reminded the court that, the applicant seeks certification of point of law to reach the Court of Appeal. He also prayed to adopt the affidavit in support of application. He submitted further that, the application originates from the decision of this court in Civil Appeal No. 67 of 2017 which was decided by Honourable Matupa, J. He urged the court to certify the

points of law stated at paragraph seven of the applicant's affidavit. In his view, the two points of law are hinged on one point; whether this court was right to award costs on the decision which was based on the issue raised *suo motto* by the court. He argued further that, at page 7 of the decision of this court, the judge invited the parties to address him on whether the decision of the District Court was worth to be called a judgment. The raised issue led this court to quash and set aside the decision of the District Court and ordered costs to be paid by the applicant. The error which faulted the decision of the District Court was not occasioned by the parties. This court also raised the same *suo motto* hence this court was not justified to order costs to this matter. The counsel urged the court to allow the application.

In this application, the applicant urged this court to certify the following points of law:

1. *Whether the High Court Judge was proper to award costs to the respondent while the appellate District Court judgment was nullified, quashed and set aside for failure to comply with the law.*
2. *Whether the High Court Judge was proper to award costs to the respondent while this decision is to the effect that the record of appeal be remitted to the appellate District Court to hear the appeal de novo.*

As rightly argued by the counsel for the applicant, the two points of law revolve around whether this court was justified to award costs while the decision of the District Court was nullified and the matter was remitted for hearing de novo. It is an established principle of the law, a certificate on point of law is normally granted where there is a serious issue that calls intervention of the Court of Appeal. In the case of **Dorina N. Mkumwa v. Edwin David Hamis**, Civil Appeal No. 53 of 2017, CAT at Mwanza (unreported), the Court of Appeal stated that:

"Therefore, when the 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."

The case of **Mohamed Mohamed and Another v. Omari Khatibu**, Civil Appeal No. 68 of 2011 provides guidance on points worth to be point of law for certification thus:

"...for instance, where there is novel point, where the issue raised is unprecedented, where the point sought to be certified has not been pronounced by the Court before and is significant and goes to the root of the decision, where the issue at stake involves jurisdiction, where the court(s) below misinterpreted the law etc..."

Based on the above stance of the law, I have carefully considered the proposed points of law and I do not find any significant point to involve the Honourable Court of Appeal. The application is devoid of merit and I hereby dismiss it with costs.

DATED at **Mwanza** this 20th day of February, 2024.



Ntemi N. Kilekamajenga.
JUDGE
20/02/2024



Court:

Ruling delivered this 20th Day of February 2024 in the presence of the counsel for the applicant Mr. Musa Nyamwero and the respondent present in person.



Ntemi N. Kilekamajenga.
JUDGE
20/02/2024



