

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF SUMBAWANGA**

**AT SUMBAWANGA**

**MISC. CIVIL APPLICATION NO. 5 OF 2023**

(Arising from the High Court of Tanzania at Sumbawanga in Pc. Civil Appeal No. 7 of 2022)

**CAROLINA HOPKIN (Administrator of the estate  
of the late Stella Ngalawa) ..... APPLICANT**

**VERSUS**

**WILBROAD KAPUFI (Administrator of the estate  
of the late Anatory Kapufi) ..... RESPONDENT**

**RULING**

**MWENEMPAZI, J.**

The applicant has made this application under section 5(2) (c) of the Appellate Jurisdiction Act, 1979 [Cap 141 R.E 2019] Rule 46(1) and Rule 45(a) of Tanzania Court of Appeal Rules, 2009. She is applying for orders that:

1. That this honourable court be pleased to certify points of law for the Applicant to appeal to the court of appeal of Tanzania.
2. Costs of this application be borne by the respondents.

3. Any other relief (s) that this honourable court deem fit and just to grant.

The application is supported by an affidavit sworn by Carolina George Hopkin. In it, she has stated that the subject matter of dispute in the case are landed properties and Plot No. 117 and 119 Block "D" Mazwi area in Sumbawanga Municipality. The applicant alleged that the same fall under the estate of the late Stella Ngalawa while the respondents alleges that the same fall under the estate of the late Anatory Kapufi.

The applicant unsuccessfully complained against the respondent is Probate Case No. 108 of 2010 before Sumbawanga Urban Primary Court. She however successfully appealed to the District Court of Sumbawanga at Sumbawanga in Probate Appeal No. 6 of 2021. The respondent was aggrieved and successfully appealed to this court in Pc. Civil Appeal No. 07 of 2022. The decision was handed down on 17/10/2022. The applicant is aggrieved and wishes to appeal to the court of appeal. She filed a notice of appeal wish cannot be attained unless this court certifies that a point of law is involved in its decision.

The applicant lodged the notice of intention to appeal to the court of appeal within statutory time. In her address of what she considers to be an issue is that she discovered a fraud and forgery after she was appointed as an administratrix of the estate of the late Stella Ngalawa and another discovery was made during trial at Sumbawanga Urban Primary Court. In the Primary Court it was revealed that though disputed plots were alleged to be purchased, the documents presented for transfer were maneuvered to sound as deed of gift in order to avoid tax and that the said deed of gift was signed by other person than the owner without power of attorney in proof of knowledge of the owner thereof. However, this court made a finding that the time limitation started to run in 1996 when the late Stella Ngalawa died and that the latest time to claim was in 2008.

The applicant stated that this court did not address the material contested issues on whether the trial court was not *fanctus officio* to re-determine the issue of ownership in respect of house number 35, that is Plot No. 119 Block D as against its directive order dated 29<sup>th</sup> December, 2010.

Therefore, the applicant has listed a number of issues. Under paragraph 10 of the affidavit, which she has opinion they are disturbing and are worthy of consideration by the court of appeal the same are as follows:

- i) Whether or not discovery of fraud and forgery during trial could mark reckoning of time limitation from the claim of the disputed plots.
- ii) Whether or not the High Court properly determined the issue of time limitation.
- iii) Whether or not the High Court properly directed its mind on the common law principle that possession is always attendant to title.
- iv) Whether this honourable court properly considered the principle of transfer and registration of title.
- v) Whether this honourable court was proper in raising and determining the issue of appointment of the applicant in the estate of the late Stella Ngalawa.

The applicant prayed that the application be granted.

The application is opposed by the respondent and has filed a counter affidavit. In it he has stated that the issue of registration was well

determined by the trial court and that of appointment was not indicated from the beginning in the pleadings. The respondent has also sworn that the issue of ownership arose after the death of the applicant's family leader who was well aware of all those transactions; and the applicant has knowledge of the existence of the respondent's late brother being in the disputed property since 1996 during the funeral of applicant's grand mother and not 2008. In general, the respondent is disputing against the points raised in paragraph 10 of the affidavit.

Hearing of this case was by way of written submission. The same was pursuant to the leave of the court which also issued a scheduled to file submission. Parties did comply to the said order.

In the submission by the counsel for the applicant, he has submitted expounding and justifying the need to have the points listed under paragraph 10 of the affidavit addressed by the court of appeal. The counsel has expressed his opinion, which in my view is a valid opinion on his position and worthy of her being given a chance to address the court of appeal for consideration.

I say so for the reasons as follows. First, this court is empowered to certify points of law and in law it is governed by Section 5(2) (c) of the Appellate Jurisdiction Act, [Cap 141 R.E 2002]. That is the exclusive jurisdiction of this court. Second, the points are arguable and indeed they need clarification and interpretation the law or statutes vis a vis facts in the case.

Although the respondent is opposing the application, that to me is a sign that they need to have their views clarified by the court of appeal. In general, it indicates there is an arguable case for consideration. For the position I am inclined to borrow the reasoning of this court in the case of **Mariam Othman Matekele Vs. Nyacheri Joseph Mwangwa**, Misc. Civil Application No. 139 of 2021, High Court of Tanzania – Mwanza (Tanzlii). Where the decision had an import that where the application is made for a certificate on the point of law to be issued our factors such as listed below must be fulfilled.

1. The court must be properly moved.
2. There must be arguable case worthy taking to the court of appeal.
3. There must be a point of law requiring interpretation by the court of appeal.

All these are reflected in the application and I believe parties deserve to be accorded a chance to be heard on their views by the court of appeal.

I therefore find that the points listed under paragraph 10(i) – (v) are points of law worthy of consideration by the court of appeal and accordingly are certified. The application is thus granted with costs.

It is ordered accordingly.

Dated and delivered at Sumbawanga this 13<sup>th</sup> day of June, 2024.



**T.M. MWENEMPAZI**

**JUDGE**

Ruling delivered in judge's chamber this 13<sup>th</sup> day of June in the presence of parties.



**T.M. MWENEMPAZI**

**JUDGE**

**13/06/2024**