

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB – REGISTRY OF MANYARA

AT BABATI

MISCELLANEOUS LAND APPLICATION 4904 OF 2024

(C/F Land Appeal No 1 of 2023 in the High Court of Tanzania in the Sub-Registry at Manyara, and Land Appeal No 114 of 2018 of Babati District Land and Housing Tribunal and Originating from Land Case No 33 of 2017 of Wareta Ward Tribunal)

ANGELA EROAPPLICANT

VERSUS

STEPHANO QWARSE.....RESPONDENT

RULING

20th May and 27th June, 2024

MIRINDO, J.:

Angela Ero, a successful party in a land dispute before Wareta Ward Tribunal in Hanang’ District, became a losing party on a first appeal before Manyara District Land and Housing Tribunal and a second appeal before the High Court.

She is back to the High Court with an application for certificate on point of law in her intended appeal to the Court of Appeal having obtained leave of this Court to make this application beyond the prescribed time.

This application was argued by way of written submissions. In her supporting affidavit, Angela Ero, outlines nine issues that call for certification as points of law. On the other hand, Stephano Qwarse, the respondent, avers in his counter-affidavit that the supporting affidavit contains no reasonable point of law worthy of certification by this Court for consideration by the Court of Appeal. He further argued at this stage, quite improperly, that no reason was given for extension of time to apply for certificate of point of law beyond the prescribed time

In dealing with this application, I am guided by the principle that certification of point of law aims at sorting out deserving cases for consideration by the Court of Appeal. This principle was stated in the leading case of **Ali Vuai Ali v Suwedi Mzee Suwedi** [2002] TLR 110. In **Mohamed Mohamed and Another v Omar Khatib**, Civil Appeal 68 of 2011 it was stressed by the Court of Appeal that the practice is to certify a single point of law unless the circumstances dictate otherwise. It is also important that a point certified is one of law though not necessarily a pure point of law. It is important that the High Court ensures that it certifies a truly point of law and not one of fact.

With these principles in mind, I proceed to examine the nine points with an attempt to determine whether they amount to points of law worthy for consideration by the Court of Appeal.

From the totality of the nine points averred by the applicant, one point is clear from the record of the Wareta Ward Tribunal, Manyara District Land and Housing Tribunal and the judgment of the High Court. It is on the legal effect of the "order" of 13 January 2007 from Wareta Village Executive Officer to Angela Ero and her husband, Niima Surumbu. This order was made on account of Angela Eron's complaint on 5 January 2007 to the Chairperson of Bashanga *Kitongoji* that her husband had dispossessed her a plot. It is important to re-examine the order in light of the sale of the disputed land by Niima Surumbu on 25 October 2009 to the respondent, Stephano Qwarse.

This point, fleetingly referred to in paragraph 6(v) of the applicant's supporting affidavit, raises a question of law whether the High Court properly applied principles of appellate review as restated by the Court of Appeal in **Neli Manase Foya v Damian Mlinga** [2005] TLR 16.

Therefore, I certify the following point for determination by the Court of Appeal:

1. Whether the High Court, as the second appellate court, appreciated the legal effect of the "order" of 13 January 2007 directed to Angela Ero and her husband, Niima Surumbu subsequent to the letter of 5 January 2007 from Chairperson of Bashanga *Kitongoj* to Wareta Village Executive Officer, vis-à-vis the subsequent sale agreement of

25 October 2009 between Niima Surumbu and the respondent, Stephano Qwarse?

2. Alternatively, was the High Court justified in sustaining a finding that the "order" of 13 January, 2007 amounted to a grant of land by Village Council rather than a settlement between Angela Ero and her husband, Niima Surumbu?

It follows that the application is allowed. Each party to bear its own costs.

DATED at BABATI this 24th day of June, 2024




F.M. MIRINDO

JUDGE

COURT: Ruling delivered in chambers this 27th day of June, 2024 in the presence of both parties. B/C: William Makori (RMA) present.

Right of appeal explained.


F.M. MIRINDO

JUDGE