

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

MISC. LAND CASE APPL.NO.232 OF 2017

ANNA MARANDO.....1ST APPLICANT

MWANAHAMISI MANDA.....2ND APPLICANT

Versus

ASIA JUMA ALLY.....RESPONDENT

Date of Last Order: 17.07.2018

Date of Ruling: 24.08.2018

RULING

S.A.N. WAMBURA, J:

Anna Marando 1st applicant and **Mwanahamisi Manda** 2nd applicant have filed this application under the provisions of Section 47 (2) of the Land Disputes Courts Act, 2002 Act No.2 of 2002 praying for the Court to certify that there is a point of law involved in an appeal intended to be lodged at the Court of Appeal of Tanzania. They are challenging the decision of delivered by Hon. Makuru, J. in Land Case No.125/2015.

The application was supported by their joint sworn affidavit.

The respondent **Asia Juma Ally**, filed a counter affidavit bitterly challenging the application. She was represented by Ms. Angela T. Mushi Advocate while the applicants appeared in person. This Court thus granted leave to have the application disposed of by way of written submissions.

It was submitted by the applicants that they are intending to appeal on two grounds being:-

- 1. That, the appellate judge erred in law for failure to determine on the issue of the adverse possession as the appellants have been occupying the disputed land for over 12 years.*
- 2. That, the appellate Judge erred in law for failure to see that there is no sufficient evidence adduced by the Respondent against the Appellants for the Court to enter judgment in favour of the Respondent.*

However, they have to seek leave of this Court to do so and have thus filed an application demonstrating that there is a

point of law which needs the attention of the Court of Appeal. They cited the case of **Simon Kibaka Daniel Vs Mwita Marwa** in support of their application and prayed for the application to be granted with costs.

I am thankful to the Counsel that she did realize that she was trying to argue the appeal in due course of trying to convince me that they had a point of law in respect of the 1st ground.

Citing the cases of **Simon Kibaka Daniel Vs Mwita Marwa** (supra) and **Ali Vuai Ali Vs. Suwedi Mzee Suwedi** (2004) TLR 110 the respondents argued that there was no point of law to be determined by the Court of Appeal. This is because the ground raised is a new one. It was not raised nor decided upon by the Hon. Appellate Judge. They thus prayed for the dismissal of the application with costs.

Now Section 47 (2) of the Land Disputes Court Act, 2002 provides that where an appeal to the Court of Appeal

originates from the Ward Tribunal, the appellant shall be required to seek for a certificate from the High Court Land Division certifying that there is a point of law involved in the appeal. This was so held in the cases **Ali Vuai Ali Vs Suwedi Mzee Suwedi** (supra) and **Simon Kibaka Daniel Vs Mwitwa Marwa** (supra) and **Nurbhai N. Rattansi Vs Ministry of Water, Construction, Energy and Environment and Hussein Rajabali Hirji** (2005) TLR 220 to mention just a few.

As stated by the applicant the second ground automatically is not on a point of law and I need not labour much on it.

The 1st ground could suffice to be a ground based on a point of law but unfortunately it was not a ground argued at the High Court. Since it is a new ground which is now being raised, I believe it cannot be a cause of appeal at the Court of Appeal as was held in the case of **Hotel Travertine Limited and Two Others Vs National Bank of Commerce Ltd**, Civil Appeal No.82 of 2002 TLR

[2006] 133, the Court of Appeal held that matters not pleaded or taken in the trial Court cannot be raised on appeal.

In the circumstances, I believe the application lacks merit and is accordingly dismissed with costs.


S.A.N. WAMBURA
JUDGE
24.08.2018