

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

MISC. LAND APPLICATION NO. 560 OF 2020

(From the Judgment of the High Court of Tanzania (Land Division) at Dar es salaam,
In Land Appeal No.115 of 2019, dated 1st September 2020)

DORIKA S. SINGILIMO.....APPLICANT
VERSUS
YUSTO BURA SULE.....RESPONDENT

Date of Last Order: 21/06/2021
Date of Ruling: 28/06/2021

R U L I N G

MWENDA, J:

In this matter the applicant has filed an application for leave to appeal to the Court of Appeal of Tanzania and for certificate on a point of Law to appeal to the Court of Appeal. His application is made under section 5(2)(c) of The Appellate Jurisdiction Act [Cap. 141 R. E. 2019], Section 47(1)(3) of the Land Disputes Courts Act [Cap 216 R. E. 2019] and Rule 45(a) of the Tanzania Court of Appeal Rules).

In support of the applicant's prayers in the Chamber application, an affidavit of Robert R. Rutahigwa (Advocate) was sworn while the counter Affidavit was sworn by the respondent one Yusto Bura Sule.

Briefly, what prompted the applicant to lodge this application is that on 7th June 2019, she filed an appeal to the High Court of Tanzania (Land Division) challenging the Decision of the District Land and Housing Tribunal's holding which declared the respondent as the Lawful owner of the suit property. When parties' arguments were considered during the hearing of the said appeal, the High Court of Tanzania (Land Division) dismissed it with Costs. Dissatisfied by the said order of dismissal the applicant have preferred this application seeking leave and certificate on the point of Law to Appeal to the Court of Appeal.

In this application the Applicant enjoyed the Services of Theodore Primus, Learned Advocate and the Respondent enjoyed the Services of Mr. Kiondo, Learned Advocate.

Before making submissions in support of this Application, the learned counsel for the applicant abandoned a prayer for leave to appeal to the Court of the Appeal of Tanzania in that once a certificate on a point of Law has been issued where that certificate is also required, leave to appeal is not mandatorily necessary as it is deemed to be included in the Certificate. In support of his argument he cited the Case of **Ndwaty Philemon Ole Saibull vs. Solomoni Ole Saibull, TLR, 2000 Case No. 209 Court of Appeal of Tanzania.**

In his submission in support of the remaining prayer, the learned advocates for the applicant submitted that they have lodged this application under Section 5(2)(c) of the appellate Jurisdiction Act [Cap 141 R. E. 2019] as well as Section 47(1)(2) and (3) of the Land Dispute Courts Act Cap.216 and that it is supported by an affidavit of Robert Rutahilwa (Advocate). He craved the contents of the said affidavit to be considered as forming part to their submissions.

The learned counsel further submitted that this application hinges on issues which appear in paragraph 5(a)(b) and (c) of the applicant's affidavit. These issues reads and I quote: -

5 (a)" Whether or not the dispute between the parties being one on Land ownership, the High Court Judge was Justified in arriving at her finding/judgment without documentary evidence or any material evidence and proof in support of ownership of disputed land to the respondent".

(b) "Whether the appellate court was entitled not to consider the fact that at the Ward Tribunal the appellant had tendered the sale agreement and the same was enough to prove her lawful ownership".

(c) "Whether or not appellate judge properly addressed herself in law on the principles governing the acquisition of Land".

According to the learned counsel these issues suffice to warrant grant of Certificate on point of law. In support thereof the learned Advocate cited the case of Asha **Zuberi & 6 others Vs. Zinduna Zuberi and 3 others, Misc. Civil Appl. No.504/2019 (unreported)**, at page 4 where the Court emphasized, among other things, the importance of issuing certificate whenever the contentions between parties raise a point of Law.

He thus concluded by submitting that this application is meritorious and the applicant should be accorded the right to be heard by the Court of appeal on the issues raised. He prayed for this Application to be granted.

Mr. Kiondo, learned advocate for the respondent did not oppose this application. He submitted that appeal is a constitutional right for any party aggrieved by any judgment of the court. He added that due to his strong

belief on Article 107A of the Constitution of United Republic of Tanzania and the Written Laws Misc. Amendment (No.3) Act 2018, (No.8/2018) where overriding objectives of the Court is emphasized this court may as well invoke those powers to grant certificate. He concluded his submission by praying this application to be granted.

Having heard the parties' submissions it is clear that in order to file an Appeal to the Court of Appeal in matters that originates from Ward Tribunal Application for certificate on point of Law is necessary.

Section 47 (3) reads and I quote:-

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.*

From this provisions, for an appeal that originates from the Ward Tribunal and is intended to be lodged to the Court of Appeal accompanying certificate on point of law is mandatory. This was the position of the court in **Pili Kavuye vs. Zawadi James Miimila Misc. Land Case Application No. 1106 Of 2017 Jerome Michael Vs. Joshua Okonda, Civil Appeal No. 19 Of 2014 (Unreported); Tumaini Meng'oru Vs. Israel Meilari (Civ. Application No. 126 Of 2017) [2018] Tzca 161; [12 March 2018 Tanzlii]**.

In the Present application the issue is whether matters raised by the applicant in paragraph 5 (a), (b) and (c) of the affidavit worth of grant of certificate for determination of the Court of Appeal as point of law. To answer this issue the court is duty bound to evaluate the proposed points to see whether they are worth being issued certificate for determination in Court of appeal. In exercise of this duty the Court of Appeal **(in Dorina**

N. Mkumwa vs. Edwin David Hamis (Civil Appeal No.53 of 2017) [2018] TZCA 221; [10 October 2018 TANZLII], the Court of Appeal observed that where:

"Therefore, when 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.....".

Also Kalunde J, in ***Pili M. Kavuyes Vs Zawadi James Mlimila (Administrator of the estate of the late Paulina Ndunguru, Mis. Land Case Application No. 1106 of 2017*** Cited the case ***Agnes Severini vs. Mussa Mdoe [1989] TZCA 11; [22 September 1989 TANZLII]; 1989 TLR 164 (TZCA)*** where it was observed that:-

*"We wish to observe at the outset that this was an unsatisfactory way of certifying a point of law. That certificate is capable of two interpretations. It could mean posing the question whether there was any evidence at all to support the concurrent decisions of the courts below. It could equally mean to ask the question whether the evidence as adduced was sufficient to support and justify those decisions. How, this distinction is imported. The question whether there was any evidence at all to support the decision is a question of law which can properly be certified for the opinion of this court. But whether the evidence as adduced was sufficient to support the decision is a question of fact which could not properly be the subject of a certificate for the opinion of this court. **For, this court takes the view that if there was some evidence on which the courts below could have arrived at the decision they did, then this court will not interfere, even though had this court***

itself tried the case it might have come to a different decision. Those who are called upon to certify points of law should, therefore, keep this distinction in mind in order to ensure that only the correct questions are certified for the opinion of this court."

As stated in the case of ***Agnes Severin Vs. Mussa Mdoe*** [Supra] certificate on point of Law is capable posing questions such as whether there was any evidence at all to support decisions of the courts below-and whether the evidence as adduced was sufficient to support and justify those decisions.

Looking at the contents of paragraph 5(a), (b) and (c) of the Applicant's Affidavit the Applicant intends to challenge the way in which the High court *assessed evidence in arriving at its findings without documentary evidence, the way it disregarded documentary evidence (sale agreement) and to see if it properly addressed itself in Law on the principle governing the acquisition of Land.*

The question whether there was any evidence at all and the way the court accepted and assessed evidence to support the decision in Land Appeal No. 115 of 2019 is a question of law which can properly be certified for the opinion of this court.

The applicant's query is the way the High Court arrived at its findings without documentary evidence in proof of ownership of disputed land, disregard of sale agreement in proof of ownership of the disputed land and failure to properly address itself in law on principles governing acquisition of land. These issues are typical points of Law as envisaged in Agnes Severin's case(supra) and as such I certify these points of Law.


With the above analysis I grant this application as prayed.

Each party shall bear their own costs.

It is so ordered.

DATED at DAR ES SALAAM this 28th of June 2021.




A.Y. MWENDA
JUDGE
28/06/2021