

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

MISC. LAND APPLICATION NO.390 OF 2022

(Originating from Land Appeal No.120 of 2016)

DORIKA NYAMATAGA.....APPLICANT

VERSUS

CHRISTINA SAMWEL LYIMO.....RESPONDENT

Date of Last Order: 21.11.2022

Date of Ruling: 30.11.2022

RULING

V.L. MAKANI, J

The Applicant is DORICA NYAMATAGA. She is praying for the court to grant her certificate as there is a point of law involved in respect of the decision of this court in Land Appeal No. 120 of 2016 (Hon. Mzuna, J) worth to be determined by the Court of Appeal.

The application is made under section 47(3) of the Land Disputes Courts Act, CAP 216 RE 2019 and is supported by the affidavit sworn by the applicant herself. The respondent filed a counter affidavit to oppose the application.

With leave of the court the matter proceeded by way of written submissions. The Applicant's submissions were drawn and filed by the applicant herself and Global Amicus Curie, Advocates. The respondent personally drew and filed her submissions in reply.

The applicant prayed to adopt the contents of her affidavit. She said at the time the dispute was lodged at Buza Ward Tribunal its jurisdiction was to hear matters with the value not exceeding TZS 3,000,000/=. That the respondent when cross examined said that the value of the suit land is TZS 80,000,000/= and went on saying that the Tribunal entertained the matter beyond its jurisdiction. She said that the issue of jurisdiction was not determined at the High Court and that it can be raised at any stage even on appeal. She pointed out further that when she was asked of the value of the land she said it was TZS 15,000,000/=. So, she insisted that the value of the land was clearly above the TZS 3,000,000/= as provided section 15 of Land Disputes Court Act. She added that the proceedings and decision of the Ward Tribunal were a nullity.

The other legal point raised by the applicant for consideration by the Court of Appeal was that the Sale Agreement of the respondent was not tendered during the hearing of the matter. That the Ward Tribunal ordered both parties to appear with their Sale Agreements when they visited the site. But she was the only one who produced her Sale Agreement but that of the respondent was produced after the conclusion of the trial, that is, it was brought on the judgment day. She said the District Tribunal and the High Court referred to the Sale Agreements and it was one of the reasons in the decisions of both the District Tribunal and the High Court. She added that respondent did not testify on the size of her land and the Sale Agreement did not specify the size of the land and that the respondent testified that she was not there when her husband purchased the suit land. The applicant prayed for the application to be granted.

In reply, the respondent submitted that the applicant has not attached orders granting her leave to file this application. That the copy of the ruling attached to her submissions in chief is not part of the application hence unprocedural. That she filed this

application without acquiring leave of the court. That there is no application before this court as there is no leave of the court.

The respondent further submitted that the point of law should refer to particular legal rule, application of relevant legal principles to interpretation of the law. She said further that the value of the property are mere facts which do not deal with the law. That the Ward Tribunal looked at the facts pleaded to establish the cause of action. That the Ward Tribunal limited itself to the value stated in the Sales Agreement by both parties. That the value cannot be estimated by mere speculations without a valuer report which report was not at the Ward Tribunal. That the Sale Agreement by respondent showed that she bought the suit land for TZS 120,000/= while the applicant's husband bought the land for TZS 340,000/=. That the matter was correctly dealt with by the Ward Tribunal. She said the parties were only asked as how much they would like to fetch in case of sale. That both parties tendered their Sale Agreements as ordered by the Ward Tribunal. That the said Sale Agreements were used by the Ward Tribunal to reach the decision. She said that the Sale Agreement of respondent states

clearly that the size of the land is one acre, therefore the allegation by the applicant that the said Sale Agreement does not indicate the size of the land is unfounded. She further said the key problem is not the size of the land but demarcation of the boundaries. She insisted that there is no indication that both the High Court and the Ward Tribunal failed to consider this material point. She prayed for this application to be dismissed with costs.

In rejoinder the applicant reiterated his main submissions and added that the value of the subject matter is estimated by the parties. As for the copy of the ruling, she said that it was not ready for collection until when the time for filing this application was almost expiring.

Before embarking on the substantive matter, I would wish to address the procedural issue that has been raised by the respondent that there is no leave that was granted for the applicant to file this application. It is my considered view that this issue should have been raised as a preliminary point of objection so that the parties could have had an opportunity of addressing it. In any

case, the court takes judicial notice as leave was granted by this very court. The objection raised is therefore dismissed.

Now, for the substantive application. In determining this matter, I have taken guidance from the decision of the Court of Appeal in

Magige Nyamoyo Kisinja vs. Merania Mapambo Machiwa, Civil Appeal No. 87 of 2018 (CAT-Mwanza), (unreported)

where it was held:

"We must emphasize that the point to be certified by the High Court must be that of legal nature and significant to warrant the decision of the Court. It is not enough for a party in a third appeal, like in the instant appeal, to simply think the lower court is wrong in its decision to have his case heard by the Court of Appeal."

(See also the case of **Dorina N. Mkumwa vs. Edwin David Hamis, Civil Appeal No. 53 of 2017, (CAT-Mwanza)**

(unreported).

The points earmarked for certification are reflected in paragraph 7 of the affidavit by the applicant. But in the course of the submissions it is clear that there were only two points of law which

the applicant wanted this court to certify namely, that the Ward Tribunal did not have jurisdiction to entertain the matter, and that the exhibit (that is the Sale Agreement of the respondent) was tendered late in time. Now, are these points worthy certification for determination by the Court of Appeal of Tanzania?

These two points were neither raised at the District Tribunal or the High Court. Indeed, the issue of jurisdiction can be raised at any time, but as said by the respondent the only thing that could measure the value of the suit land were the Sale Agreements which reflected and indeed showed that the matter was within the pecuniary jurisdiction of the Ward Tribunal. So, this issue of jurisdiction though it is a matter of law, but it is not worthy the certificate. In any case, what was before the Ward Tribunal was the issue of demarcations/boundaries which in my view would not entail the establishment of jurisdiction on pecuniary basis. I therefore reject certifying this issue.

The issue of the Sale Agreements being received at the later stage of the proceedings is a question of evidence. This issue is not a

pure point of law as it involves factual evidence. This point was not even raised at the District Tribunal or the High Court In short, a party to proceedings cannot pick and choose which points to raise at a certain stage of the proceedings and what points to raise at another stage. This point cannot warrant the issuance of a certificate on a point of law for determination by the Court of Appeal.

In conclusion, the applicant has not convinced this court to certify the points of law reflected in paragraph 7 of the affidavit for determination by the Court of Appeal. In the result, this application lacks merit, and it is dismissed with costs.

It is so ordered.




V.L. MAKANI
JUDGE
30/11/2022