

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 53 OF 2022

(Arising from the Judgment and decree of the High Court of Tanzania (Land Division) at Dar es Salaam in Land Appeal No. 53 of 2021 dated 31st January 2022)

LAURENCE ASSELI NSANYA.....APPLICANT

VERSUS

MOHAMED KIGESU MAHEGU.....RESPONDENT

10/5/2022 & 08/6/2022

RULING

A. MSAFIRI, J.

On 15th day of February 2022, the above named applicant lodged the present application, by chamber summons under Section 47(2) and (3) of the Land Disputes Court Act CAP 216 R.E 2019, (the Act) seeking for the following reliefs namely;

- i. This Honourable Court be pleased to grant the applicant an order for leave to appeal to the Court of Appeal of Tanzania against the decision of High Court of Tanzania (Land Division) in Land Appeal No. 53 of 2021 between Mohamed Mahegu Laurence Asseli*

Asseli

Nsanya delivered on 31st January 2022 by Honourable V. L. Makani, Judge.

- ii. That this Honourable Court be pleased to issue certificate certifying that there are points of law involved in the intended appeal to be addressed by the Court of Appeal against the decision of High Court of Tanzania (Land Division) in Land Appeal No. 53 of 2021, between Mohamed Mahegu Laurence Asseli Nsanya delivered on 31st January 2022 by Honourable V. L. Makani, Judge.*
- iii. Costs of this application be provided for.*
- iv. That this Honourable Court be pleased to make any further orders as it may be just and convenient in the circumstances of the case.*

The application has been taken at the instance of Phynix Attorneys and is supported by an affidavit sworn by Laurence Asseli Nsanya, the applicant herein.

Hearing of the application proceeded by way of written submissions whereas Emmanuled Nasson and Kambibi Kamugisha learned advocates appeared for the applicant and the respondent respectively. Both parties lodged their written submissions as scheduled hence this ruling.

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Before canvassing the submissions in support and rival to the application, a brief background giving rise to the present application is apposite.

Parties to the present application had a dispute over a piece of land measuring about 4 acres. The dispute was referred to Chanika Ward Tribunal (the Tribunal) in Land Dispute No. 68 of 2020 which decided in favour of the respondent herein. Being resentful of the Tribunal's decision, the applicant lodged Land Appeal No. 104 of 2020 before the District Land and Housing Tribunal for Ilala at Ilala (the DLHT).

After hearing the parties, the DLHT quashed the judgment and proceedings of the Tribunal for the reason that the proceedings before the tribunal were lodged after the expiry of 12 years. The respondent herein was aggrieved with the decision of the DLHT hence he preferred an appeal to this Court with four grounds of appeal.

After hearing the parties, this Court allowed the appeal therefore the judgment and decree of the DLHT were quashed and set aside and the judgment of the Tribunal was restored. The applicant therefore intends to challenge the decision of this Court before the Court of Appeal. Having

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lodged the notice of appeal on 08th February 2022, the applicant lodged the present application with prayers as shown above.

The applicant submitted at length contending that there are points of law worthy of consideration by the Court of Appeal namely that;

- i. That, the Honourable High Court Judge erred in law by holding that the dispute was not time barred.*
- ii. That the Honourable Judge erred in law by holding that the cause of action arose on 2016.*
- iii. That the Honourable Judge erred in law by entertaining a ground of appeal which was abandoned by the appellant (now respondent).*
- iv. That the Honourable Judge erred in law by holding that in establishing time limit the District Tribunal has to confine itself to the applicant's pleadings.*
- v. That from the very beginning, the Ward Tribunal had no pecuniary jurisdiction to entertain a four (4) acres claim dispute situated in Dar es Salaam.*

The applicant has urged the court to certify the above listed as points of law worthy of consideration by the Court of Appeal. On reply, the respondent has strongly opposed the application contending that there is no any point of law worthy of consideration by the Court of Appeal. Hence the application should be dismissed.

Having considered the submissions of the parties rival and in support of the application, the central issue for my determination is whether the application has merits.

It is a general law that a party who wishes to appeal to the Court of Appeal in the land matters which originates from Ward Tribunal must obtain the certificate on point of law and leave to appeal. This is provided under section 47 (1) and (2) of the Act. The said provision provides for mandatory procedure of obtaining certificate from the High Court that a point or points of law are involved in the matter for the determination of the Court of Appeal and leave to appeal to a party who wishes to have access to the Court of Appeal for a third appeal for a land dispute which originated from the Ward Tribunal.

The position was underscored in the case of **Jerome Michael v. Joshua Okanda**, Civil Appeal No. 19 of 2014, Court of Appeal of Tanzania

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at Mwanza, (unreported). The purpose of certificate on a point of law is to ensure that deserving cases only reaches the Court of Appeal as it was held in the case of **Ali Vuai Ali v. Suwedi Mzee Suwedi** [2004] TLR 110 at page 120. The Court of Appeal in the said case held that, I quote;

"The exercise is therefore a screening process which would leave for the attention of the Court only those matters of legal significance and public importance."

In another case of **Mohamed Mohamed and Another v. Omar Khatibu**, Civil Appeal No. 68 of 2011, Court of Appeal of Tanzania at Zanzibar, (Unreported), the Court of Appeal held that:-

"..... A point of law worthy being certified for our decision would be, for instance, where there is novel point, where the point sought to be certified has not been pronounced by this Court before and is significant or goes to the root of the decision, where the Court below misinterpreted the law, etc. In this sense a mere error of law will not be a good point worthy the certificate."

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Equally in an application for leave like the present one there are conditions to be considered upon which leave to appeal is grantable. Such conditions were expounded in the decision of the Court of Appeal in **British Broadcasting Corporation v Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (unreported). In that case the Court stated that;

*Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must however judiciously exercised and on the materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal (see: **Buckle v Holmes (1926)** ALL E. R. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical no leave will be granted.*

From the foregoing quoted decisions, it is imperative to note that the grant of leave or certificate on point of law is not automatic but conditional

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in that it can only be granted where the grounds of the intended appeal raise issues in the appeal before the Court.


Furthermore arguable, my duty in this application is not to determine the merits or demerits of the points raised when seeking certificate or leave to appeal. Instead a court has only to consider whether the proposed issues are embraced in conditions set out in the authorities referred above.

Consequently I find the application has disclosed points of law worthy of consideration by the Court of Appeal. I therefore certify the following points of law namely that;

- a. Whether the Hon. Judge erred in law by holding that the dispute was not time barred.*
- b. Whether the Hon. Judge erred in law by entertaining a ground of appeal which was abandoned by the appellant (now respondent).*
- c. Whether the Ward Tribunal had pecuniary jurisdiction to entertain a four (4) acres claim dispute situated in Dar es Salaam.*

Costs shall be in the cause.




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A. MSAFIRI,
JUDGE
8/6/2022