

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 452 OF 2021

MOHAMED ALLY DALLA.....APPLICANT

Versus

LEONARD NICHOLAUS SEIF.....RESPONDENT

RULING

16/04/2022 & 30/05/2022

Masoud, J.

Aggrieved by the decision of this court dated 28/09/2022, the applicant filed the present application seeking for leave of this court within which he could appeal to the applicant against the said decision. In order to satisfy the requirement of lodging an appeal to the Court of Appeal, the applicant is required to be issued with a certificate that there is a point of law which needs consideration of the court of Appeal and hence this application.

The application was contested. In disposing of this application parties were ordered to file written submissions. The written submissions filed in compliance with the order of the court are on the record although the applicant did not file his written submission in chief in support of the

application. I need not reproduce them in any detail. I have carefully gone through the submissions and especially that of the respondent. The applicant brought his application under section 47 of the Land Disputes Courts Act, cap. 216 R.E 2019 without specifying the specific subsections that he is employing.

Looking at the prayers in the chamber summons, I am satisfied that the applicant is essentially seeking for the issuance of a certificate on the point of law which falls under the purview of section 47(3) of the said Cap. 216.

With this, I find that the error in the present instance is curable for the interest of justice and regard being also heard to the overriding objective principle. I would accordingly dismiss the objection raised and forthwith proceed to determine on the merit of the application. The cited authority of

Mandorosi Village Council and Others vs Tanzania Breweries Ltd and Others, Civil Appeal No. 66 of 2017 dismissing applicability of the overriding objective in certain situations could not in the circumstances of the present case apply.

As there were no written submissions filed by the applicant pursuant to the order of this court of 25/11/2021, there was nothing to expound on matters raised by the applicant in his affidavit supporting the application and particularly on whether there was indeed a point of law involved in the intended appeal compelling grant of a certificate to allow the applicant to proceed with his appeal to the Court of Appeal.

The foregoing notwithstanding, my scrutiny of the applicant's affidavit left me in no doubt that there was no point of law shown as required by the law, and which the applicant's submission could have expounded on if at all. The case of **Mohamed Mohamed and Another versus Omar Khatib, Civil Appeal No. 68 of 2011 at pages 10-11** (unreported) clearly illustrates the requirements leading to the grant of the certificate to appeal to the Court of Appeal. Section 47(2) of the cap. 216 emphasize on that point, that it is only an issue on point of law which must be entertained. In this application no point of law was raised such as to warrant the grant of the certificate sought.

In the upshot, the application is dismissed with costs.

It is so ordered.

Dated at Dar es salaam this 30th day of May 2022.


B. S. Masoud

Judge



