

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 142 OF 2022**

(Arising from Misc. Land Appeal No. 129/2021)

NICHOLAUS SWAI APPLICANT

VERSUS

REDEMPTA NASSORO RESPONDENT

RULING

Date of Last Order: 20/6/2022

Date of Ruling: 13/7/2022

A. MSAFIRI, J

The applicant has instituted this application seeking for the orders that; first, this Court be pleased to grant leave to the applicant to appeal to the Court of Appeal against the judgment and decree of this Court in Land Appeal No. 129 of 2021, and second; the Court be pleased to certify that there is a point of law involved in the intended appeal.

The application is supported by the affidavit of the applicant whereas the respondent has filed the counter affidavit to oppose the application. The hearing of the application was conducted orally. The applicant was represented by Mr. Derick Kahigi, learned advocate while the respondent appeared herself.

Alle.

In submission in chief, Mr. Kahigi prayed to adopt the affidavit of the applicant as part of his submissions. He stated that this application originates from the Ward Tribunal and when this Court was hearing the matter, it was exercising appellate jurisdiction as a second appellate Court.

He pointed that, it is mandatory for the matters originating from the Ward Tribunal to seek for certificate of point of law by this Court. He said that, paragraph 4 of the affidavit states clearly points of law which is intended to be raised at the Court of Appeal.

He went on to state that, the first point of law is that the High Court sitting as a second appellate court when hearing the Appeal No. 129 of 2021 was improperly composed so it has no jurisdiction to entertain the appeal. Mr. Kahigi argued that, there was no assessors as per the requirement of law during the hearing of the said appeal by this Court. That, section 39(1) of the Land Disputes Courts Act, Cap 216 R.E 2019, provides that, the appeal originating from the Ward Tribunal shall be heard by one Judge sitting with two assessors. He averred that, this is a mandatory provision and the applicant raised it during the hearing of an appeal but the Court chose to ignore it.

The second point of law pointed by Mr. Kahigi and which is reflected in paragraph 5 of the applicant's affidavit was that, this court in its judgment on the said appeal did not consider the fact that the mediation which are conducted in Ward Tribunals has proper procedure established under the

Alls.

law and that, the purported mediation in the case before the Ward Tribunal did not comply to any of the said procedures.

He submitted further that during the hearing of the appeal, the applicant contended that the Mediation has never been conducted at the Ward Tribunal as the same has proper procedures according to the law. He argued that however, the appellate judge in impugned judgment held that there is no proper or strict procedure in mediation and what matters is to record the parties' agreement.

According to Mr. Kahigi, this position by the appellate Court was wrong as Section 14 (1),(2),(3),(4) of the Land Disputes Courts Act shows procedures for mediation in the Ward Tribunals. He stated that, this point was raised by the applicant during the hearing of the appeal but it was disregarded. He concluded that, he prays for the leave to file an appeal to be granted and these two points of law be certified so that they can be determined by the Court of appeal. He also pray for the costs to be in the cause.

In reply, the respondent being a layman simply responded to the contents of the affidavit and denied them. On the point of composition of this Court during the hearing of the said appeal, she pointed that, Hon. Judge who heard the appeal said that the matter could proceed without assessors. On the point of mediation, she stated that there was agreement between the parties. She lastly prayed that the application be dismissed.

Atts.

In rejoinder, the counsel for the applicant reiterated the submission in chief and added that, the applicant has already filed his notice of intention to appeal to the court of appeal and has served the same to the respondent.

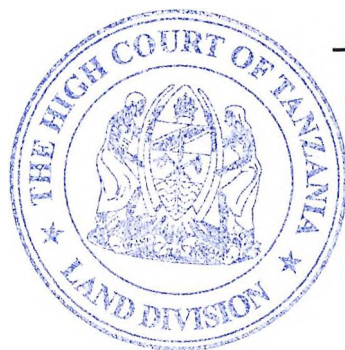
At this point, I wish to point out that it is trite law that certification on point of law for appeal purpose is not automatic, this court will have to consider points to be certified as contained in the affidavit in support of the application. For a certificate on point of law to be obtained, the applicant has a duty to satisfy the court that there is a point of law worthy calling for the court of Appeal intervention. My role is not to go to the merit of the appeal but simply to determine as to whether issues raised by the applicant qualify to be certified points of law to be determined by the Court of Appeal.

Having gone through the applicant's affidavit, it is my opinion that, the point of law worthy to be entertained by the Court of Appeal is the point of composition of the High Court sitting as the second appellate court, hearing the matter originating from the Ward Tribunal. The issue here is whether the absence of the assessors during the hearing of the said appeal contravened section 39 of the Land Disputes Court Act, and that, for that matter, the appellate court had no jurisdiction over the matter.

Having said that, I certify the above said point as a legal point worth for consideration by the Court of Appeal. *Adde.*

In the upshot, this application is granted. Costs shall follow the main cause.

Order accordingly.



A handwritten signature in blue ink, appearing to read "A. Msafiri".

A. MSAFIRI,

JUDGE

13/7/2022