

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 14 OF 2023

WILLIAM MAHENGELA APPLICANT

VERSUS

COSMAS MWANDOLE RESPONDENT

RULING

Date of Last Order: 14.03.2023

Date of Ruling: 23.03.2023

A.MSAFIRI, J

The application before me, by the applicant, is made under Section 5 (2) (c) of Appellate Jurisdiction Act Cap 141 R.E. 2019 and other enabling provision of law.

The applicant is seeking before this Court to certify point of law for him to file an appeal to the Court of Appeal of Tanzania against the decision of Hon. Makani, J delivered on 23rd day of August, 2021. The application was supported by the affidavit of William Mahengela, the applicant.

On 14.03.2023, when the matter came for hearing, the applicant was represented by Mr. Barnaba Lugua, learned Advocate while the respondent was present in person (unrepresented).

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In his submission in chief, Mr Lugua gave brief background of the dispute. He stated that, the applicant had instituted the dispute for the first time at Lumemo Ward Tribunal, in Land Application No. 19 of 2017 which was decided in favour of the applicant.

He further stated that the respondent appealed to the District Land and Housing Tribunal(DLHT) in Land Appeal No. 239 of 2017, whereas, the DLHT nullified the decision of Lumemo Ward Tribunal and ordered trial *de novo*.

He submitted further that, instead of going back to the Ward Tribunal so that the matter can be heard *de novo*, the applicant instituted a new Land Application No. 40 of 2019 before Lumemo Ward Tribunal, which was decided against his favour. The applicant went on to appeal in the two appellate courts, including this Court in Land Appeal No. 103 of 2020, before Hon. Makani, J but both appeals were decided against him.

Mr Lugua averred that in the application at hand, the applicant is seeking for a certification of point of law that the proceedings and decision of Land Application No. 40 of 2019 before the Ward Tribunal was a nullity as the said Tribunal has no jurisdiction to entertain it. In his opinion, this is because the Land Application No. 19 of 2017 which constitute the same

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parties and same subject matter is still pending before the same Ward Tribunal as it has never been tried *de novo* as it was ordered by DLHT.

Hence, the first point of law for certification which need to be determined by the Court of Appeal is that the case was not heard *de novo* as directed by the DLHT.

Mr Lugua submitted that the second point of law for certification is on evaluation of evidence particularly on how the suit land changed hands from previous owners to the respondent. And the third point of law is on analysis of documentary evidence, while the fourth point of law is on ambiguity of location of suit land where the High Court did not consider the said ambiguity.

He prayed for the Court to certify the above grounds as points of law, so that the applicant can appeal to the Court of Appeal.

In reply, the respondent adopted the contents of his counter affidavit, and further contended that it is not true that there is a pending case at Lumemo Ward Tribunal but the case was heard *de novo* as per the DLHT order and directives, whereas, both parties testified again before the same Ward Tribunal.

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He further stated that, there was no any ambiguity on the location of the suit land as the Ward Tribunal had visited the locus in quo, and that the lower courts gave serious analysis to the evidence of both parties in determining the suit and came with the right and fair decisions. He contended that there is no serious points of law and prayed for the Court to dismiss the application with costs.

In rejoinder, the applicant reiterated what was submitted in chief.

I have gone through the entire submission of the parties, and it is clear that this Court is invited to determine as whether there is any point of law to certify for the applicant to appeal to the Court of Appeal.

As per the evidence in the affidavit and by submission in Court, Land Application No. 19 of 2017 over the suit property was instituted for the first time in Lumemo Ward Tribunal. After the decision which was in favour of the applicant, the respondent filed an appeal at the District Land and Housing Tribunal of Kilombero Malinyi District at Ifakara, (DLHT) in Land Appeal No. 239 of 2017. The said DLHT nullified the proceedings and decision of Application No. 19 of 2017 by Lumemo Ward Tribunal and ordered trial *de novo*.

From this facts, I agree on the following points of law which I certify for determination before the Court of Appeal; *Acce.*

- 1) Whether by the order of trial *de novo*, the parties were to go back and re institute Application No.19 of 2017 which was already nullified by the DLHT instead of instituting a fresh application as the applicant claims to have done,
- 2) Whether the applicant's institution of Land Application No. 40 of 2017 was the compliance of the DLHT order of trial *de novo* in Land Appeal No. 239 of 2017,
- 3) Whether the Application No.19 of 2017 is as of now pending before the Ward Tribunal as claimed by the applicant.

I strongly believe that these are the issues which would need the attention of the Court of Appeal. I proceed to grant the application. Costs shall follow the main cause.

It is so ordered.



A. MSAFIRI
JUDGE

23/03/2023