

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 688 OF 2022

(Arising from the Judgment of the High Court Land Division, Hon. Mwenegoha J,
dated 29 April 2022 in Misc. Land Appeal No. 32 of 2021)

JOHN KIWASIRA.....1ST APPLICANT

MUSSA OMARY.....2ND APPLICANT

VERSUS

MWATUMU SAIDI SENZIA.....RESPONDENT

RULING

Date of last Order:14/03/2023

Date of Judgment:27/04/2023

K. D. MHINA, J.

This application is brought by way of Chamber Summons made under Section 47 (2) and (3) of the Land Disputes Court Act, Cap 216 [R: E 2019] ("the LDCA"), section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 [R: E 2019] ("the AJA") and Rule 47 of the Court of Appeal Rules 2019 ("the Rules").

The Applicant, *inter-alia*, is seeking the following orders: -

- i. That the applicant be granted a certificate on points of law to appeal to the Court of Appeal against the decision in Misc. Land Appeal No. 32 of 2021.*
- ii. That costs of the application be provided for*
- iii. Any other relief the Court may deem fit to grant.*

The grounds for the application were expounded in the separate affidavits, which John Kiwasira (the 1st applicant) and Mussa Omary (the 2nd respondent) swore and affirmed in support of the application.

The points of law which the applicants request this Court to certify are;

- i. That the High Court Judge erred in law in dismissing the appeal while the trial tribunal heard the matter without having jurisdiction.*
- ii. That the High Court Judge erred in law in dismissing the appeal whereby the trial tribunal heard the matter filed against the 2nd respondent, who is a wrongful party and had no locus standi.*
- iii. That the High Court Judge erred in law by failing to evaluate the evidence adduced by the applicants and hence reached an erroneous decision in favour of the respondent*

The application proceeded ex-parte against the respondent after the efforts to trace her proved futile. The last effort was by way of substituted service by publication in Mwananchi Newspaper dated 17 January 2023.

By way of background, the matter which triggered this application traces back to 2018; it commenced at Nia Njema Ward Tribunal at Bagamoyo in Land Case No. 09 of 2018, where the parties litigated over a

parcel of land measuring 100 feet × 100 feet located at Nia Njema area within Bagamoyo District.

The "battle" at the Ward Tribunal was triggered by the allegations by the respondent herein, who complained that she purchased the suit land from 1st applicant on 7 May 2006 for a consideration price of TZS 400,000/=. In 2018, the respondent discovered that her plot was sold by the 1st applicant to the 2nd applicant. When the respondent approached the 1st applicant, he agreed that he sold the suit land again to the 2nd respondent and decided to refund her the purchase money.

In its decision dated 22 July 2019, the Ward Tribunal declared the respondent the lawful owner of the suit land. Further, it declared that an act of the 1st applicant to resale the suit land was unlawful.

Undaunted, the applicants appealed to the District Land and Housing Tribunal for Kibaha vide Land Appeal No. 117 of 2019, which was dismissed on 29 September 2020 on the following grounds based on the grounds of appeal;

One, the Tribunal had jurisdiction to entertain the matter as per section 15 of the LDCA. The value of the suit land was TZS 400,000/=, and

the value of the suit land is that stated by the one who instituted the matter. That value determines the jurisdiction unless the other party has a contrary view that should be countered with evidence.

Two, section 18 (2) of the LDCA allows a relative or member of the household of any party to any proceeding to act for the party upon request.

Three, the 1st applicant has no locus to speak on behalf of other people. The dispute involves the land which was sold twice, first to the respondent and later to the 2nd applicant.

Four, since the cause of action arose in 2018, then the application was not time-barred.

Again, dissatisfied, the applicants appealed to this Court vide Misc—Land Appeal No. 32 of 2021. On 29 April 2022, this Court dismissed the appeal for want of merits.

Relentless, the applicants again approached this Court with the application at hand, seeking the indulgence of this Court to certify that there are points of law for the determination of the Court of Appeal.

At the hearing, Ms. Evaresta Tumainiel Kisanga, learned advocate, represented the applicants.

Submitting on the 1st ground, she argued that the intention of the applicants to appeal was actuated by the fact that this court erred in law by dismissing the appeal while the trial tribunal heard the matter without jurisdiction. She explained that at the ward tribunal, the respondent testified that she purchased the suit land for TZS 400,000/= and that fact which the first applicant denied. Further, the respondent's witness testified that he did not remember the exact amount. Still, during cross-examination, he stated that the respondent paid TZS 2,000,000/= as the first installment and TZS 2,000,000/= remained =. That witness also denied signing the sale agreement of TZS 2,000,000/=.

On this first ground, Ms. Kisanga concluded by citing section 13 of the LDCA, which provides that the pecuniary jurisdiction of the Ward Tribunal should not exceed TZS 3,000,000/=. Therefore, the Ward Tribunal entertained the matter without jurisdiction.

On the second ground, she submitted that at the Ward Tribunal, there was no evidence adduced against the second applicant, indicating that he was the buyer of the suit land. Further, the sale agreement did not mention the second applicant as the buyer of the suit land.

She further submitted that when the second applicant testified at the Ward Tribunal, he said he was not the buyer of the plot, and he was not cross-examined on that issue. That means his evidence was uncontroverted.

Further, at the DLHT, the second applicant informed the tribunal that he was not the buyer of the plot. Still, in its decision, the tribunal indicated that the second applicant was the buyer, and it ordered him to pay the costs of the suit.

For the second ground, she concluded by submitting that; therefore, it was wrong to join the 2nd applicant while he was not involved.

Submitting on the third ground, Ms . Kisanga stated that during the trial at the Ward Tribunal, the respondent tendered the sale agreement, but it was objected to. Further, the respondent witness denied to witness that sale agreement. The respondent also admitted that there was a handwritten document that she did not tender. Ms. Kisanga argued that the typed sale agreement was filed by the respondent and her family at home. The issue of the sale agreement was raised at the DLHT, but it was never discussed. She submitted that the law requires the tendered document to be a primary document per section 66 of the TEA.

She concluded by submitting that in this matter; there are points of law that need to be determined as they are prima facie.

Having considered the chamber summons, its supporting affidavit, and the oral submission made by the learned counsel for the applicants, the issue that has to be resolved is;

"Whether or not there is the existence of points of law worth to be certified by this Court for the consideration of the Court of Appeal."

In determining this application, I would like to cite two important decisions by the Court of Appeal as an entry point.

One, is the case of **Magige Nyamoyo Kisinja vs. Merania Mapambo Machiwa**, Civil Appeal No. 87 of 2018 (Tanzlii), where it was held that;

"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. Matters of law which the Court is called upon to determine must transcend the interest of the immediate parties in the appeal. Indeed, in some cases, matters

of law placed before the Court for determination are of public importance especially when an interpretation of the law is involved”.

Two, is the case of **Dorina N. Mkumwa vs. Edwin David Hamis**, Civil Appeal No.53 of 2017 (Tanzlii), where it was held that:

"Therefore, when High Court receives applications to certify point of law, we expect Rulings showing serious evaluation of the question whether what is proposed as a point of law, is worth to be certified to the Court of Appeal. This Court does not expect the certifying High Court to act as an uncritical conduit to allow whatsoever the intending appellant proposes as point of law to be perfunctorily forwarded to the Court as point of law. We are prepared to reiterate that Certificates on points of law for appeals originating from Ward Tribunals mark a point of finality of land disputes that are predicated on matters of fact. Certificates are designed to ensure that land disputes originating from Ward Tribunal come to an expeditious end, preferably in the High Court”.

From the above position of law, I will scrutinize and evaluate each point as advanced by the applicants in pursuit of certification by this court.

Starting with the 1st ground that the Ward Tribunal determines the matter while it lacks pecuniary jurisdiction. First, this ground was dealt with by both the DLHT and this Court in appeals. The DLHT decision on this was that the Ward Tribunal had jurisdiction to entertain the matter as per

section 15 of the LDCA. That the value of the suit land was TZS 400,000/=, and the value of the suit land is that stated by the one who instituted the matter. That value determines the jurisdiction unless the other party has a contrary view that should be countered with evidence. When raising that matter at the DLHT, the applicants stated that the suit land had the value of TZS 22,000,000/=; that statement was treated as an afterthought, and there was no evidence to support that assertion.

At the second appeal, that issue of pecuniary jurisdiction suffered the wrath of being dismissed for want of merits based on the same reasons as advanced by the DLHT.

From the discussion above, it is quite clear that, as per the records, there is no substantial material evidence to counter the fact that the value of the land in dispute was TZS 400,000/= as per the application filed by the respondent and the evidence that the land was purchased for TZS 400,000/=. Further, the applicants keep changing the value of the suit land; at the DLHT and the appeal before this Court, they stated that the value was TZS 22,000,000/= while in this application, the counsel submitted that the value was TZS 4,000,000/=. The respondent paid TZS 2,000,000/= as the first installment.

Therefore on this, the law is quite clear as per **Yusuf Khamis Hamza vs. Juma Ali Abdalla, Civil Appeal No. 25 of 2020** (Tanzlii), held that:-

"Of course, we are alive with the settled position of the law that time limitation goes to the jurisdictional issue of the court and that it can be raised at any time, even at the appellate stage by the court, but in order for it to be noted and raised it would require material evidence to be placed before the Court."

From the above shortfall, the first ground cannot be considered a point of law worth being certified by this court, and the ground is insignificant to worth being considered by the Court of Appeal.

The second ground that the High Court Judge erred in law in dismissing the appeal whereby the trial tribunal heard the matter filed against the 2nd respondent, who is a wrongful party and had no locus standi. On the submission to support this ground, the lament was that the 2nd applicant was condemned to costs by the DLHT.

After perusing the records, I find it very strange that the 2nd applicant is complaining after he was condemned to pay costs. This is because, after the decision of the Ward Tribunal (which did not order for costs), both

applicants decided to appeal to the DLTH; therefore, it was the 2nd applicant himself who decided to appeal against the decision of the Ward Tribunal. After their appeal was dismissed, the DLHT condemned the applicants to pay the costs of the appeal.

It is from the discussion above that, first of all, the 2nd applicant has no one to blame for what happened. Second, the ground is not the point of law; deep inside, the 2nd applicant is lamenting that he was condemned to pay costs.

Therefore, this ground also is not worthy of being certified for the consideration of the Court of Appeal.

The third ground should not detain me long because the gist of that ground was the complaint on the tendering of documents, i.e., the sale agreement and what the witnesses testified.

Having gone through the records, that ground and its supporting submission was never raised at the DLHT and before this Court in the second appeal. Further, the issue is a matter of facts that need to revisit and re-evaluated the evidence. Therefore, despite the issue being a matter of fact, the applicants also intend to raise it for the first time at the court

of appeal. This is not proper, and the law is clear that the Court has no jurisdiction to deal with the issue raised before it for the first time. In **Robert Nyakie@ Nati vs. R**, Criminal Appeal No. 393 of 2018 , (Tanzlii) the Court of Appeal held that;

"This Court has, on numerous occasions held that it has no jurisdiction to deal with an issue raised for the first time that was not raised nor decided by lower courts unless that issue raises a point of law; the jurisdiction of the Court is confined to matters which came up in the lower court and were decided".

Flowing from above, it is not worth certifying the insignificant point that cannot be determined by the court of appeal, even if this court will certify it as a worthy point of law.

From the discussion above, I am satisfied that the points raised by the applicants do not qualify to be certified as points of law to be determined by the Court of Appeal.

In the upshot, the application is unmeritorious; consequently, I dismiss it. Since the application proceeded ex-parte, I ordered no costs.

I order accordingly.



K. D. MHINA
JUDGE
27/04/2023