

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 804 OF 2022
(Originating from Land Appeal No.44 of 2022)

ANCHILA H. KARWANI.....APPLICANT

VERSUS

KIZITO GALINOMA.....RESPONDENT

EX PARTE RULING

Date of Last Order: 27.05.2023

Date of Ruling: 18.05.2023

T. N. MWENEGOHA, J.

The Applicant is seeking for a certificate on point of law, for the applicant to lodge his appeal to the Court of Appeal of Tanzania, against the decision of this court, given by Hon. Hemed, J. vide Misc. Land Appeal No. 44 of 2022. The Application was made under **Rule 46(1) of the Court of Appeal Rules, G.N 368 of 2019 and Section 47(3) of the Land Disputes Courts Act, Cap 216 R. E. 2019**. It was also accompanied by the affidavit of Anchilla Hilda Karwani.

The same was heard by way of written submissions and exparte against the respondent. Mr. Philemon Mujumba, learned counsel appeared for the applicant.

In his submissions, Mr. Mujumba insisted that, under paragraph 5 of the affidavit the applicant has stated clearly that, the Trial Ward Tribunal

entertained a case with by the person who had no locus to appear for or on behalf of the respondent. That, the Judgement of the Trial Tribunal at page 4 speaks clearly on this issue. That, this fact was supposed to be dealt with by the District Land and Housing Tribunal for Kinondoni and later the appealed to this Court. He cited the case of **Khanani Said Aljabry versus Nevumba Salum Mhando, Misc. Land Appeal No. 81 of 2021, High Court of Tanzania, Land Division, at Dar es Salaam.**

He argued that another point of law is that, the High Court ignored the principle of the first buyer who gains the good tittle over the disputed property.

Having considered the arguments of the counsel for the applicant, the issue for determination is whether the Application has merits or not. To answer the issue at hand, I will dwell on the case of **Lyamuya Construction Company Ltd versus Board of Registered Trustees of Young Women Christians Association of Tanzania, Civil Appeal No. 2 of 2010 (Unreported)**, where a point of law was explained as follows;-

"A point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process."

In the instant Application, the applicant has raised two points of law as according to him. First, is that, the case at the Trial Tribunal was entertained for or against the respondent who had no *locus standi*. To prove that, he quoted the observation by the Trial Tribunal in its

Judgment, showing that, the findings of the said Tribunal proved that the land in question belonged to the respondent's father who purchased it from one Salum Nalengwa. Based on this observation, the applicant was of the view that, the respondent had no locus to stand for his further. Surprisingly, in the same case, the respondent (Kizito Galinoma), was sued by the same applicant. Therefore, it is the applicant himself who was at fault to sue a wrong party if any. In that case, I find this to be a fact and not a point of law that needs the attention of the Court of Appeal of Tanzania, **see Lyamuya's case (supra)**.

The second point is that, the District land and Housing Tribunal for Kinondoni as well as the High Court of Tanzania, ignored the issue that the first buyer gains the good title over the disputed property. In my settled opinion, this too is a factual issue, it is not a point of law. Therefore, the same should also fail.

In the end, I find no merits in this Application. The same is dismissed accordingly.

It is so ordered.


T. N. MWENEGOHA
JUDGE

18/05/2023

