

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

MISC. LAND CASE APPLICATION NO.746 OF 2022

(Originating from Land Revision No.42 of 2022, by Msafiri J)

TERESPHORY MUGANYIZI ANTHONY.....APPLICANT

VERSUS

MERCHADES OSWARD KALEMELA.....RESPONDENT

RULING

Date of Last Order: 22.05.2023

Date of Ruling: 30.06.2023

T.N. MWENEGOHA, J

The applicant sought for a certificate on point of law, for him to file an appeal to the Court of Appeal of Tanzania. The Application was made under section **5(2)(c) of the Appellate Jurisdiction, Cap 141, R.E 2019, section 47(1)(3) of the Land Disputes Courts Act, Cap 216 R.E 2019 and Rule 45(a) of the Tanzania Court of Appeal Rules.**

Advocate Robert Rutahwa, arguing in support of the Application, maintained that, under paragraph 6(i) to (v) of the applicant's affidavit, there are highlighted points of law in need of certification by this court. That, it is apparent that, Hon Judge Msafiri wrongly interpreted the principles governing the dichotomy behind Revision and Appeal and their application in the instant matter.

In reply, Merchades Oswald Kalemela appearing in person, contended that, there is no point of law to certify in this Application. What the

applicant is doing is to delay the course of justice and deny the respondent to proceed with execution. Therefore, the Application is incompetent and ought to be denied.

Having gone through the submissions of parties, the issue for determination is whether the Application has merits or not.

In this Application, the applicant was duty bound to highlight the point of law forming the basis of the Application at hand. In his submissions, the counsel for the applicant pointed out the point of law he relies into his intended appeal, that is "*Hon Judge Msafiri wrongly interpreted the principles governing the dichotomy behind revision and appeal and their application in the instant matter*".

Looking at it, in my opinion, that is not a point of law, to retain the attention of the Court of Appeal of Tanzania. By a point of law, as stated in number of authorities, firstly it should be apparent on the face of the impugned decision. Secondly, it should not attract any arguments or evidence in its ascertainment, see **Lyamuya Construction Company Limited versus Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010, Court of Appeal of Tanzania (unreported)**. Therefore, the argument advanced by Court for the applicant is a pure factual issue, that will attract arguments from the parties.

For these reasons, I find the Application to be devoid of merits. The same is dismissed with costs.




T.N. MWENEGOHA
JUDGE
30/06/2023