

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

MISC. LAND CASE APPLICATION NO. 476 OF 2023

TERESIPHORY MUGANYIZI ANTHONY.....APPLICANT

VERSUS

MERCHADES OSWARD KALEMELA.....RESPONDENT

RULING

23rd to 25th October, 2023

E.B. LUVANDA, J

The Applicant above named is seeking for leave to appeal against the decision of this Court refusing to certify that there is a point of law involved for the Applicant to appeal to the Court of Appeal. In the affidavit in support in particular paragraph five, the Applicant allege he intent the apex Court to consider the following grounds: One, the High Court judge failed to appreciate and certify the point that subject of revision and appeal on land matters is not settled hence requiring the consideration by the Court of Appeal; Two, the High Court judge was not entitled to determine only one ground and dismiss it while there were other four grounds left undetermined; Three, the High Court judge in failure to determine the rest

of the grounds raised without reasons denied the Applicant the right to be heard.

Mr. Robert R. Rutaihwa learned Advocate for the Applicant, submitted that the application that was before this Court was for certificate on point of law so that he can prefer his appeal to the Court (sic, Court of Appeal). He submitted that for the application of this nature once it is refused the only remedy is to file an appeal. He submitted that the Applicant now intend to file an appeal so that the issues raised in paragraph five of the affidavit can be resolved by the Court of Appeal.

In reply, the Appellant submitted that no leave is now required over land matters when it emanates from the High Court exercising its original jurisdiction, citing section 5(1)(a) of the Appellate Jurisdiction Act, Cap 141. R.E. 2019.

Strictly speaking this application is wholly misconceived and misplaced. It is a settled law that an order of this Court refusing to certify a point of law, is final and conclusive, there is window or room for further litigation. In fact the law was intended to debar protracted appeal like the instant one. In the case of **Yakobo Magoiga Gichere vs Peninah Yusuph**, Civil Appeal No. 55/2017 CAT at Mwanza, at page 7, the apex Court propounded,

'...this Court has oftentimes stated that a decision of the High Court refusing to grant certificate on a point of law under section 47(2) of the Land Disputes Courts Act, is final and no appeal against it lies to this Court'

Indeed, in the impugned ruling, the provision of section 47(1) and (3) of the land Disputes Courts Act, Cap 216 R.E. 2019, were cited as enabling provision, meaning that the matter emanate from the Ward Tribunal over which the jurisdiction of the Court of Appeal to entertain any appeal or any matter arising therefrom, depend exclusively on this Court certifying a point of law involved. Short of that, will be the end of the story.

The application is dismissed with costs.



E.B. LUVANDA
JUDGE
25/10/2023

Ruling delivered through virtual court attended by the Respondent and in absence of Mr. Robert R. Rutaiwa learned Advocate for the Applicant.



E.B. LUVANDA
JUDGE
25/10/2023