IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO.676 OF 2023

(Arising from Land Appeal No. 38 of 2023, High Court of Tanzania, Land Division at Dar Es Salaam)

LEVIS WAMOYA.. APPLICANT

VERSUS

REBECCA JACOB..RESPONDENT

RULING

Date of Last Order: *03.11.2023*
Date of Judgment: *08.11.2023*

T.N.MWENEGOHA, J

The applicant sought for an order of this Court to certify that there is a point of law, for the applicant to appeal to the Court of Appeal. The Application was made under **section 47 (3) of the Land Dispute Courts Act, Cap 216, R.E 2019**. It was supported by the affidavit of the applicant himself, Levis Wamoya and the same was heard by written submissions after the respondent chose not to contest this Application.

Advocate Lutufyo Mvumbangu, appeared for the applicant. His submissions in favour of the Application were that, there are two points of law, that are in need of certification by this Court as stated under paragraph 4 of the applicant's affidavit. He insisted that, the first point of law is whether the 1st Appellate Tribunal can determine an appeal without being adequately supplied or availed with records of the lower Court. This

issue was also raised on the 2nd appeal but the same was not resolved. The 2nd point in need of certification is whether, the Appellate Tribunal can ignore directives given by the High Court or departing from the predecessor Chairman's observations or decision without disclosing any reason to that effect.

Having heard the submissions of Mr. Lutufyo for the applicant and also having gone through the affidavit in support of the Application, the issue for determination is whether the Application has merits or not.

In such determination, I refer to 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, Court of Appeal of Tanzania, (Unreported).** It was observed by the Court in this case that, a point of law has the following characteristics; firstly, it should be apparent on the face of it and on the face of records. That is to say, when the same is seen, it should speak by itself. Secondly, it does not need a presentation of evidence or long drawn arguments to ascertain it. The second point is just an extension of the former. That is to say, if an issue to be termed as a point of law is apparent on the face of it, no one will need evidence or arguments for or against it.

At hand, I have two points, which the applicant has reffered them as points of law to be certified for the appeal to be filed at the Court of appeal of Tanzania.

Firstly, is whether the 1st Appellate Tribunal can determine an appeal without being adequately supplied or availed with records of the lower Court. Upon examination of this point, we can agree that, this is a pure

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factual issue. Faulting the 1st appellate Court to have determined an appeal without being availed with the records from the lower tribunal is something that needs tangible evidence to prove its existence or non-existence. Therefore, the 1st point does not qualify to be a point of law.

Another point in need of my certification is whether, the appellate tribunal can ignore directives given by the high Court or departing from his predecessor Chairman observations or decision without disclosing any reason to that effect. In my settled view, this is also a fact that need proof by evidence. We need to go through the records and invite parties to argue on this allegation. The same also doesn't fit in the definition of the point of law given in **Lyamuya Construction Company Ltd**, (supra).

Hence, for the reasons aforegiven, I find nothing to certify in this Application as points of law, that need the attention of the Court of Appeal of Tanzania. Both points given by the applicant's counsel are factual issues and not points of law.

Eventually, the Application is dismissed for want of merits. No order as to costs.

T.N. Mwenegoha.
Judge
08/11/2023