

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

MISC. LAND APPLICATION NO. 581 OF 2023

YUNUS JUMA LILINGANI APPLICANT

VERSUS

HIZA ABASI SHESHE RESPONDENT

RULING

21/28 19/3/ 2024

GWAE, J

On 14th September 2023, the applicant, Yunus Juma Lilingani, filed the instant suit against the respondent praying for this court to certify that, there is point of law worth consideration by the Court of Appeal of Tanzania in the decision of this Court in Land Appeal No.23 of 2022 and grant a certificate of law.

The application was brought under section 47 (3) now section 47 (2) of the Land Disputes Courts Act (Cap 216 R.E 2019) and was taken at the instance of Evarlasting Legal Aid Foundation, supported by the applicant's affidavit.

In the affidavit, the applicant deposed that, the decision of this court in Land Appeal No. 23 of 2022 delivered on 23rd May 2022. He

stated that, before he can file his appeal before the Court of Appeal of Tanzania, he is legally required to obtain a certificate on point (s) of law from the High Court, hence this application. He deponed further that, he filed an application for extension of time before this court to obtain the certificate on point of law and the same was granted. He further stated that, there is the point of law as

"Whether the High Court fairly determined the matter on the balance of probability."

The respondent could not file their counter affidavit rather on 21st February 2024 Mr. Buruhani Mussa learned advocate appeared on behalf of the respondent. Ms. Rehema Mgweno, learned advocate represented the applicant. On the same day, hearing proceeded verbally.

In his submission in chief, Ms. Mgweno stated that, they have demonstrated their point of law namely; whether the High Court fairly determined the matter on balance of probabilities. She referred to the case of **Antony M. Masanga vs. Penina** (Mama Mgesi), Civil Case No. 11 of 2018 (TZ CAT) 556 at page 10, where it was stated that:-

"... A party bears evidential burden and each case it is in the balance of probabilities".

She submitted that, the appellate required higher standard as if it was in the criminal case, the respondent tendered the sale agreement. She prayed for the application to be granted.

In reply thereof, Mr. Buruhani submitted that, the ward Tribunal analysed evidence adduced by the parties and eventually entered its verdict in favour of the respondent. However, the DLHT reversed the ward Tribunal's verdict. This court exercising its 2nd appellate jurisdiction reversed the DLHT's decision, in his opinion, the applicant ought to have shown pure point (s) of law and not factual issues. She stated that, the point of law pointed out is the matter of fact and not matter of law worth for consideration by the Court of Appeal. She then prayed that this application be dismissed with costs for want of merit.

In rejoinder submissions, the counsel for the appellant insisted that, the appellate judge wrongly held the applicant failed to prove as depicted at page No.9 and 10 of the judgment to be appealed to the Court of Appeal.

Having gone through the competing submissions advanced by the parties' advocates, thus the issue for determination is, whether the applicant has established a point of law worth for consideration by the Court of Appeal of Tanzania.

It is significant to note that, the application for certificate that there is a point (s) of law to be considered by the Court of Appeal of Tanzania is a mandatory step to be undertaken by any party who wants to challenge the decision from this court for the matter originating from the ward Tribunal. Section 47(2) of the Land Disputes Courts Act, Cap, 216 R.E 2019 as amended by Act No. 11 of 2023, the Sector Reform Laws (Miscellaneous Amendments), imposes the condition that, in order to appeal to the Court of Appeal, the aggrieved party must seek a certificate on point of law worth consideration by the Court. For ease of reference, I reproduce section 47 (3) of the Land Disputes Courts Act as hereunder:-

"47 (3) Where an appeal to the Court of Appeal originates from the Ward Tribunal, the appellant shall be required to seek for the Certificate from the High Court certifying that there is point of law involved in the appeal."

Given from the above provision of the law, it is vivid that, the applicant has to establish that he has a point of law worth of sanctioning the Court of Appeal of Tanzania. In the instant case, the applicant demonstrated the point namely, whether the High Court fairly determined the matter at the balance of probabilities.

The point demonstrated by the applicant in my view, is not the point of law in the meaning ascribed by section 47 (3) now section 47 (2) of the Land Disputes Court Act (Supra). That is a point of fact which is not worthy of being certified by this court as the point of law for consideration by the Apex Court of the land. Due to the reason that, if this point is certified as the point of law, the Court of Appeal would be compelled to find whether there was enough evidence to prove the respondent's case on balance of probability.

Therefore, in my opinion, it is not a duty of the Court of Appeal of Tanzania, the third and Highest Court in our Court system to re-asses evidence while exercising its 3rd appellate jurisdiction. The trial tribunal, the first appellate court and this court as the second appellate court determined all matters of facts. The third appellate court deals with the matters of law only. No matters of facts are dealt with in the third appeal.

In the case of **Dorina N. Mkumbwa vs Edwin David Hamis**, Civil Appl. No. 53/2017 CAT (Unreported), it was stated thus:-

*"It is therefore self evident that applications for Certificate of the High Court on points of Law are serious applications. Therefore, when High Court receives applications to certify point of law, we **expect***


Ruling 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 finality of land disputes that a predicted from matter of fact. (Emphasis supplied)"

From the above position, I find the point raised by the applicant is lacking necessary qualifications for consideration by the Court of Appeal of Tanzania as a point of law. Consequently, I dismiss the application with costs.

It is so ordered.

DATED at DAR ES SALAAM this 19th day of March, 2024.




M. R. Gwae
JUDGE