

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

Misc. LAND CASE APPLICATION No. 29 OF 2021

(Arising from the High Court (Bukoba District Registry) in Land Case Appeal No. 38 of 2019 & original from the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 4 of 2017)

CLEOPHACE KAIZA ----- APPLICANT

Versus

POTENCE MUGUMILA ----- RESPONDENT

[Administrator of the estates of the late
Clemence Sylivester]

RULING

07/06/2021 & 11/06/2021
Mtulya, J.:

Mr. Cleophas Kaiza (the Applicant) was dissatisfied with the decision of this court in **Land Case Appeal No. 38 of 2019** (the case) rendered down on 12th March 2021 hence registered the present application seeking leave to access our final court of appeal in judicial hierarchy, the Court of Appeal.

The Applicant has registered two (2) reasons to persuade this court to decide the application in his favour. The reasons were drafted in 2nd and 5th paragraphs of his Affidavit in support of the chamber summons filed in this court, viz: first, this court dismissed all

grounds of appeal, but raised new issue suo moto which determined the appeal without affording the parties an opportunity to be heard; and second, under Haya community customary law, it is the clan members who have powers and authority to administer clan lands.

During the hearing of the application, the Applicant decide to invite Mr. Mathias Rweyemamu, learned counsel, to argue the application for him. In his brief submission, Mr. Mathias submitted that this court in its decision dismissed the appeal, but did not go further to dismiss the appeal in its entirety. According to Mr. Mathias, the learned judge in this court after dismissing the appeal, he went on inviting revisionary powers of this court as depicted at page 6 of the judgment and decided the matter of clan meeting *suo moto* without affording the parties an opportunity to be heard.

On second reason, Mr. Mathias submitted that the learned judge in the case disputed the clan meeting exhibit which was tendered in the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Land Application No. 4 of 2017** (the Application) without any protest from the Respondent. However, the matter was raised at an appellate level in this court by the Respondent to gain an advantage of afterthought. According to Mr. Mathias, this court in its judgment as depicted at page 7 stated that: *the content of the*

minute shows as if the respondent knew that somebody else would arise and claim the land because the respondent has no connection with the land. This finding of the court, according to Mr. Mathias, interferes on the evaluation of evidence by the Tribunal's decision and contradicts directives of the precedent in **Shah v. Aguto** [1970] EA 263). The interpretation employed by Mr. Mathias in the precedent is to the effect that evidences and credibility of witnesses are well assessed by trial courts or tribunals which are better positioned to see them. Finally, Mr. Mathias prayed this court to grant the application in search of certainty of the stated matters in the Court of Appeal.

The prayer registered by Mr. Mathias was protested by Mr. Potence Mugumila (the Respondent) arguing that he filed two grounds of appeal in this court and during the hearing of the appeal, he mentioned several faults in the decision of the Tribunal and were afforded the opportunity to be heard, and finally this court trusted him on balance of probability. According to the Respondent, during the hearing of the case he stated on several faults in the clan meeting minutes with regard to *cautioned clause* which stated that: *asiweze kubughudhiwa na mwanaukoo yeyote*; contradiction in *kumiliki ardhi* (ownership on land) and *kuitunza ardhi* (land caretaker); and attendance of three (3) children of the Applicant during clan meeting

hence it was a family meeting instead of clan meeting. To the opinion of the Respondent, this court has done its role properly to re-evaluate evidences tendered and credibility of witnesses in the Tribunal and its decision cannot be tested at the Court of Appeal.

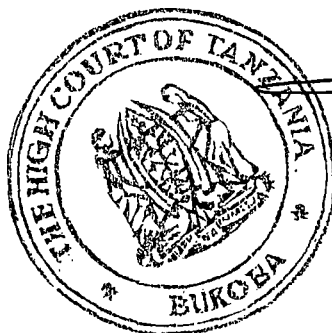
On my part, I think, the law in section 47 (2) of the **Land Disputes Court Act** [Cap. 216 R.E. 2019] (the Act) and Rule 46 (1) of the **Court of Appeal Rules**, 2009 GN. No. 368 of 2009 (as amended in 2019) (the Rules) allow this court to grant leave for decisions of this court originated from the District Land and Housing Tribunals. The cited laws are silent on criteria to be used in determining and granting leave to the Court of Appeal. This is distinct with the provision in section 47 (3) of the Act which mentions certification on point of law for appeals originated from Ward Tribunals. In plain interpretation, the criteria in section 47 (3) of the Act is openly displaying much stricter conditions than in section 47 (2) of the Act.

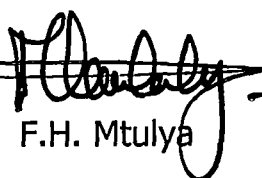
However, practice in this court has shown that both questions of facts and law may be considered in granting leave to appeal to the Court of Appeal in decisions of this court originated from the District Land and Housing Tribunals, provided applicants provide sufficient reason (s) to persuade this court to grant the application in their favour. In the present, application, the Applicant had registered two

(2) reasons in support of his application and when the application was called for hearing, Mr. Mathias and the Respondent were disputing whether the right to be heard was afforded to the parties in this court and whether the evidence and exhibits tendered without protest in the Tribunal can be re-evaluate in this court during appeal hearing. In brief, the parties are in agreement that there are disputes which need to be resolved by the Court of Appeal, not this court which has already determined the appeal.

Having noted the parties are in agreement that there are unsettled issues, and considering Mr. Mathias has submitted not only factual issues, but claim on illegality of the decision of this court in reversing the decision of the Tribunal, this court has no reason why it should not grant the application in favour of the certainty of the matters in our superior court. I therefore decided to grant leave to the Applicant to file his appeal in the Court of Appeal in accordance to section 47 (4) of the Act and the Court of Appeal Rules.

It is so ordered.



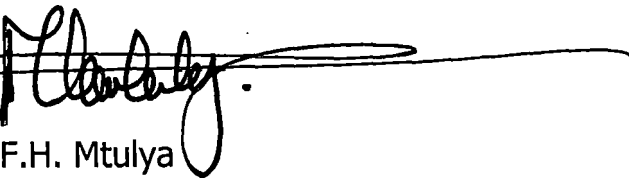

F.H. Mtulya

Judge

11.06.2021

This ruling was delivered in chambers under the seal of this court in presence of the Applicant Mr. Cleoplace Kaiza and in the presence of the Respondent, Potence Mugumila.




F.H. Mtulya

Judge

11.06.2021