

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**MIC. LAND APPLICATION NO.48 OF 2022**

***(Arising from High Court of Tanzania at Shinyanga, in Land Appeal  
No.77 of 2021)***

**MWIBINZA MAZOYA .....APPLICANT**

**VERSUS**

**PETER KAPELEMESE .....1<sup>ST</sup> RESPONDENT**

**SAMWEL NKINDA .....2<sup>ND</sup> RESPONDENT**

**BUKWIMBA MWANDU .....3<sup>RD</sup> RESPONDENT**

**RULING**

***26<sup>th</sup> July & 11<sup>th</sup> August 2023***

**F.H.MAHIMBALI, J,**

The applicant appears to have been aggrieved by the decision of this court in Land Appeal No. 77 of 2021 delivered on 23<sup>rd</sup> day of November 2022, it being his second appeal having also lost at the DLHT after he had also lost at the trial ward tribunal. The central issue being allegation that the respondents invaded his land which he inherited from his father. This Court

(Kulita J) after a careful consideration, confirmed that the evidence in record fully established that the appellant absconded the said land since 1992. So by 2020, it had passed 28 years of peaceful enjoyment by the respondents. He thus considered the respondents are in lawful possession by the legal principle of adverse possession. The assertion by the applicant that when he left, his land left it under the control of the ten cell leader was defeated by the fact that there was no such testimony from the said ten cell leader neither any witness for that effect of handing over to the ten cell leader. The appellant is again aggrieved by that finding of this Court. Wishes to challenge it before the Court of Appeal.

As the case originated from the Ward Tribunal, its appeal to Court of Appeal is only possible as a matter of law if there is a certification by this Court that there is a point of law that is worth determinable by the Court of Appeal. This application is thus brought under section 47(3) & 47 (4) of the Land Disputes Courts Act No.2 of 2002 Revised Edition 2019, and Rules 46 (1) & 47 both of the Tanzania Court of Appeal Rules, 2009 R.E 2019. The application is supported by the affidavit of the applicant's counsel. Section 47(3) of the LDCA provides:

*(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.*

*(4) The procedure for appeal to the Court of Appeal under this section shall be governed by the Court of Appeal Rules.*

In respect of the Court of Appeal Rules governing issues of certificate for civil appeals before it, provide the following:

*46.-(1) Where an application for a certificate or for leave is necessary, it shall be made after the notice of appeal is lodged.*

*47. Whenever application is made either to the Court or to the High Court, it shall in the first instance be made to the High Court or tribunal as the case may be, but in any criminal matter the Court may in its discretion, on application or of its own motion give leave to appeal or extend the time for the doing of any act, notwithstanding*

*the fact that no application has been made to the High Court.*

Having complied with these essential steps, as on what legal grounds this court should certify as points of law, the applicant through his advocate has listed three of them, namely: -

- 1. Whether the High Court upholding the concurrent findings of the said District Tribunal as well as Ward Tribunal on the conveyance of the disputed piece of land from PW1 to the Respondents in absence of sale agreement was tenable in law.*
- 2. Whether PW1 had title to transfer to the World at large.*
- 3. Whether the trial High Court was on the right track took upper hands on the occupation of the disputed piece of land and ignored all together the question of conveyancing in establishment of ownership of the same.*

During the hearing of the application, the applicant was represented by Mr. Mathias Mashauri learned advocate whereas the respondent who resisted the application was represented by Mr. Makanjelo Ishengoma also learned advocate.



The applicant's counsel adopted the affidavit dully sworn in support of the application and prayed that the same be considered by the Court in granting this application as the High Court erred in all the three grounds of appeal qualifying them to be purely points of law.

On the other hand, Mr. Makanjelo Ishengoma for the respondent in resisting the application also adopted the affidavit in opposition of the application. In his submission, he considered the applicant's application as baseless and not qualifying to be legal points worth determinable by the Court of Appeal. he prayed this Court to be guided by the decision of the Court of Appeal in the case of **Rutagatina CL Vs. The Advoacte Committee & Clavery Mtindo Ngalapa**, Civil Application No. 98 of 2010, CAT at DSM where at page 5 it was stated:

*"...An application for leave is usually granted if there is good reason, normally on a point of law or on a point public importance, that calls for this Court's intervention....."*

What are considered by the applicant as legal points for CAT's consideration, have been dully addressed by the High Court as well as the lower tribunals. Thus, there is nothing to be determined by the Court of Appeal in the context

of this case. He also referred this court to the decision of the case of **Charles Kombe Vs. Kinondoni Municipal Council**, Misc. Civil Application No. 90 of 2017, HC Dsm at page 6: -

*"...Needless to say that **leave to appeal is not an automatic. It is with the discretion of the Court to grant or refuse.** The discretion must, however be judiciously exercised on the materials before the court. **Leave to appeal will be granted upon where grounds of appeal, raises questions of general importance or a novel point of law or where the grounds show prima facie or arguable appeal** (see *Bucle Versus Holmes (1926) ALL ER Rep. 90 at page 91*). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted" [Emphasis added].*

On this submission, the respondent's counsel prayed that this application should be dismissed with costs.

I have thoroughly considered the affidavits and submissions by the parties' both counsel. It is indeed a requirement of the law that no land appeal shall lie against a decision of the High Court originating from Ward

Tribunals unless the High Court certifies that there are legal issues worth consideration of the Court of Appeal.

In applications to certify that there are points of law to be considered by the Court of Appeal in the intended appeal, in the case of **AH Vuai AH Vs. Suwedi Mzee Suwedi** [2004] TLR 110, the Court of Appeal held:

*"Certificate on a point of law is required in matters originating in Primary Courts; it is provided therein that an appeal against the decision or order of the High Court in matters originating in Primary Courts would not be unless the High Court certifies that a point of law is involved in the decision or order."*

In the case of **DORINA N. MKUMWA VERSUS EDWIN DAVID HAMIS**, Civil Appeal no. 57 of 2017, the Court of Appeal regarding application on certificate on point of law, emphasized that: -

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

The point of consideration by this court is whether this application is worth of consideration for its grant. I have gone through the brief affidavit of the applicant; I have not been able to know what exactly are the said points of law worth determinable by the Court of Appeal that this court should certify for that consideration. I had expected that the applicant should have elaborated what legal errors the High Court committed in the said judgment which its remedy is only the Court of Appeal being the highest Court of record. A close digest of what is to be certified, I have not encountered any serious legal issue for the Court of Appeal's intervention.

By the way, it should be noted that an application for leave to appeal to the Court of Appeal is differentiated from an application for certificate on point of law. In my considered view, an application for leave to appeal to the Court of Appeal is lesser complicated than an application on certificate on point of law which is more serious. It is then expected that the applicant in an application for certification on a point of law not only to point out a point of law for certification but sufficiently deliberate how the said point of



law has been misapplied or misapprehended by the high Court for it to be certified for the Court of Appeal's determination. I have not seen serious submission for this Court's evaluation of the question whether what is proposed as a point of law, is worth to be certified to the Court of Appeal.

The Court of Appeal being the highest Court of justice in the country should be reserved to resolve matters of highest importance and serious issues in the country for the development of legal jurisprudence, thus setting precedence. Certifying any of the proposed issues as a point of law for Court of Appeal's determination, is to make the High Court a conduit pipe allowing whatsoever the intending appellant proposes as point of law to be perfunctorily forwarded to the Court of Appeal as point of law.

From the foregoing, I therefore reject all these grounds with costs and certify nothing as pure legal points worth determinable by the Court of Appeal.

It is so ordered.

DATED at SHINYANGA this 11<sup>th</sup> day of August, 2023.



**F. H. MAHIMBALI**  
**JUDGE**