

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

**MISC. LAND APPLICATION NO. 332 OF 2019**

*(Arising from the decision of this Court dated 23/05/2019 in Land Appeal No. 6 of 2018  
and Appeal Case No. 280/2016 Kilombero District Land and Housing Tribunal at Ifakara,  
Original Land Case No. 46 of 2016)*

**ZAHARA MINGI ..... APPLICANT**

**VERSUS**

**ATHUMAN MANGAPI ..... RESPONDENT**

**RULING**

**S.M. MAGHIMBI, J.**

The applicant is aggrieved by the decision of this court in Land Appeal 06/2018 which is a second appeal originating from the Lumemo Ward Tribunal's Land Case No. 46/2016 and a subsequent appeal at the District Land and Housing Tribunal of Kilombero at Ifakara in Land Appeal No. 280/2016. She has moved this court under the provisions of Section 47(2) of the Land Disputes Courts Act, Cap. 216 R.E 2002 for the following orders:

- (a) this honorable court be pleased certify that there are points of law involved in the applicant's intended appeal meriting the attention of the Court of Appeal.
- (b) Costs to follow events.

- (c) Any other/further order(s) as this honourable court shall deem it fit and just to grant.

The application was supported by an affidavit the applicant Zahara Mingi dated 19/06/2019. In this court both parties appeared in person and unrepresented. By an order of the court dated 26/02/2020, the application was argued by way of written submission.

Submitting on the application, the applicant pointed out that the four proposed points of law as stated on para 5 of the affidavit are:

1. Whether the trial tribunal had jurisdiction to entertain the matter.
2. Whether it was proper for the trial court to try the matter without being properly constituted, that is without disclosing the presiding members,
3. Whether the 2<sup>nd</sup> appellate court was correct to hold that the appellant (applicant) failed to prove her title over the suit; land by way of adverse possession.
4. Whether the 2<sup>nd</sup> appellate court was proper to hold that the appellate tribunal did properly confirm that the trial tribunal had evaluated and analysed the evidence on record.

Having considered the submissions of both parties and the records of the application, I will start with the 3<sup>rd</sup> and 4<sup>th</sup> points of law as tabled by the applicant since the points are on the analysis of evidence by the courts. In the case of **Dorina N. Mkumwa Vs. Edwin David Hamis, Civil Appeal No 53 Of 2017** (unreported), the court of appeal held:

*In land disputes, **the High Court is the final court on matters of fact.** The Legislature has taken this finality so seriously that it*

*has, under subsections (1) and (2) of section 47 of Cap. 216 [as amended by the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018 Act No. 8 of 2018] imposed on the intending appellant the statutory duty to obtain either leave or certificate on point of law before appealing to this Court. It is therefore self-evident that **applications for Certificates of the High Court on points of law are serious applications.***

Since the high court is the final court on matters of facts, the applicant cannot lodge her appeal at the Court of Appeal on points of facts. Looking at the two points above (the 3<sup>rd</sup> and 4<sup>th</sup> points) are clearly on allegations of misapprehension of evidence by all the courts including this court. The appellant intends to challenge whether the 2<sup>nd</sup> appellate court was correct to hold that the appellant (applicant) failed to prove her title over the suit land by way of adverse possession and whether it was proper for the 2<sup>nd</sup> appellate court to hold that the appellate tribunal did properly confirm that the trial tribunal **had evaluated and analysed the evidence on record**. Proof of title is a matter of fact to be decided on preponderance of evidence and whether or not the trial tribunal properly analysed the evidence is a matter of fact. These are not matters of law intended by the legislature u/s 47(2) of the Act, to be certified for the attention of the apex court. Therefore the two points are not going to be included in the certification.

Going to the proposed 1<sup>st</sup> and 2<sup>nd</sup> points of law, the applicant questions the jurisdiction of the tribunal including the propriety of its constitution on the fact that the presiding members were not disclosed. In her submissions,

the applicant pointed out that this issue was never raised in the preceding proceedings; but she was quick to point out that the issue of jurisdiction can be raised at any point as it goes to the root of the trial. She supported this argument by citing the case of **Tanzania Revenue Authority Vs. Tango Transport Company Limited, Civil Appeal No. 84/2009** (unreported) where the position was emphasized. The applicant challenged the title of the proceedings which read “Baraza la Migogoro ya Ardhi Kata ya Lumemo Ifakara” arguing that it is a non-existing body not mentioned in the law.

On the constitution of the tribunal, the applicant submitted that the point has to do with the jurisdiction of the court and that there were some dates when the matter came for hearing and the constitution of the tribunal was not disclosed contrary to the law which provides for quorum of the tribunal. I have avoided to go into the details of her argument because it is not the position of this court to determine the details of what transpired at the tribunal since when it comes to the analysis of the trial records, this court is functus officio.

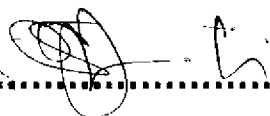

All in all, I have considered the two points to which suffice is for me to say that they challenge the jurisdiction of the trial tribunal in determining the matter. The jurisdiction challenged is both in form as to the name of the court and in content, the quorum of the sitting members as per the law. Since the issue of jurisdiction goes to the root of the validity and legality of the decision, this court is satisfied that the 1<sup>st</sup> and 2<sup>nd</sup> proposed points of law qualify to be certified as points of law deserving the attention of the

apex court of the country. That said, the application is hereby granted, the first and second points of law proposed by the applicant to wit;

1. Whether the trial tribunal had jurisdiction to entertain the matter.
2. Whether it was proper for the trial court to try the matter without being properly constituted, that is without disclosing the presiding members

are hereby certified as points of law involved in the applicant's intended appeal meriting the attention of the Court of Appeal. Costs of this application shall follow cause in the intended appeal.

Dated at Dar-es-salaam this 14<sup>th</sup> day of May, 2020.

  
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**S.M. MAGHIMBI.**  
**JUDGE**