

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. LAND APPLICATION NO. 11 OF 2022

(C/F High Court of Tanzania at Arusha, Misc. Land Appeal No. 4 of 2014)

GODWIN NGAO ROSERO.....APPLICANT

VERSUS

RISSIPA SAMSONI.....RESPONDENT

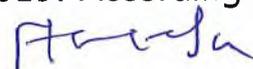
RULING

15 & 30.08.2022

MWASEBA, J.

As a consequence of being aggrieved by the decision of this Court in Misc. Land Appeal No. 4 of 2014, the applicant lodged this application by way of chamber summons supported by an affidavit of himself urging this Court to grant certificate on points of law to appeal to the Court of Appeal.

The application has been preferred under the provisions of Section 47 (3) of the **Land Disputes courts Act**, Cap 216 R.E 2019. According to the



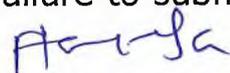
affidavit deponed by the Applicant on 9th day of February, 2022 in paragraph 6, the following are the grounds required for certification:

- a. That the appellate court erred in law when it failed to consider and ascertain the existence of two conflicting decisions in Land Appeal No. 4 of 2014 and Civil Appeal No. 29 of 2007.
- b. That the appellate court erred in law when it failed to take into consideration that the Respondent herein has no *locus stand* to sue.
- c. That the appellate court erred in law when it failed to properly interpret the principle of adverse possession and declared the Respondent herein as adverse possessor to the property.

At the hearing of this application on the 15th day of August, 2022, the applicant appeared in person, unrepresented whereas the Respondent was represented by Mr. Lengai Nelson Merinyo, learned counsel. The application was determined orally.

Arguing in support of ground one for certification, the applicant submitted that the High court contradicts itself by delivering two conflicting decisions in PC Civil Appeal No. 29 of 2007 and Land Appeal No. 4 of 2014 which were both determined by Masengi, J.

On the second ground of certification, the applicant submitted that the respondent had no *locus stand* to sue for her failure to submit letters of



administration. He raised this issue from the Ward tribunal and District Land and Housing Tribunal but he had been neglected. He averred that the respondent was not legally married by his young brother but she provides contradictory claims in which she states that she was given a house by her mother and sometimes she states that she was given it by her husband. She is not certain as to who gave her the said house. Further to that the respondent said the house is located at Mianzini while it is located at Ilkiurei Villlage. That is why the applicant wants the Court of Appeal to interfere the situation.

On the third ground of certification, the applicant submitted that the court failed to interpret the principle of adverse possession since the respondent had no *locus stand* to sue and she is not aware of the location of the said house. So, he prayed for his grounds to be certified so that he could be able to clear those irregularities at the Court of Appeal.

Responding to what was submitted by the applicant, Mr. Merinyo conceded to the first and second grounds to be certified as points worthy of determination by the Court of Appeal except ground No.3. He added that ground No.3 particularly the issue of adverse possession is a new issue as it was never raised in Misc. Land Appeal No. 4 of 2014 thus it lacks jurisdiction to be entertained at this stage. To support his argument,

Howeja

he cited the case of **Georgio Anagnostou and Another Vs Emmanuel Marangakis and Another**, Civil Application No. 464/01 of 2018 (CAT sitting at Dar Es Salaam-Unreported). So, he prayed that this court rejects this point.

Concerning the issue of costs, he prayed that if the application will be dismissed then costs should be borne by the applicant but if the court will use its discretion to grant this application let the costs be in the cause. However, so long as the parties are relatives the court should use its discretion wisely in granting costs.

In his brief rejoinder, the applicant denied to have relationship with the respondent. As for the issue of adverse possession it relates to other grounds therefore, it is not a new ground as alleged by the respondent's counsel. He distinguished the case of **Georgio Anagnostou** (supra) on the ground that it is not related to his case and prayed for the costs to be in the cause.

Having heard the submissions from both parties and gone through the record, the pertinent issue for determination is whether the raised points of law are worthy certifying as points to be determined by the Court of Appeal.



In determining this issue, I will begin by citing the Court of Appeal decision of **Dorina N. Mkumwa vs. Edwin David Hamis** (Civil Appeal No.53 of 2017) [2018] TZCA 221; [10 October 2018 TANZLII], which observed that:

"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....."

In executing the above prescribed duty, I will determine the Applicant's proposed points for certification to determine if at all they qualify for certification purposes. In a point relating to the existence of two conflicting decisions (Land Appeal No. 4 of 2014 and Civil Appeal No. 29 of 2007) I am of the firm view that the applicant has not established a point of law to be considered by the Court of Appeal as this ground calls for some facts to be ascertained to find out the said conflicts between the two points while it is a point of law which is required to be certified. As it was held in the case of **Magige Nyamoyo Kisinja Vs. Merania Mapambo Machiwa**, Civil Appeal No. 87/2018 (CAT-Unreported) that:

"We must emphasize that the point to be certified by the High Court must be that of legal nature and significant to warrant the decision of the Court. It is not enough for a party in a third appeal, like in the instant appeal, to simply think

Hamis

the lower court is wrong in its decision to have his case heard by the Court of appeal. Matters of law which the Court is called upon to determine must transcend the interest of the immediate parties in the appeal. Indeed, in some cases matters of law placed before the Court for determination are of public importance especially when an interpretation of the law is involved."

Being guided by the preceding decision, this ground lacks merit and it is thus rejected forthwith.

With regard to the second ground for certification on whether the respondent had no locus stand to sue. It is my firm view that this point is worthy of certification to be certified as point of law for determination by the court of appeal. This is due to the fact that if the respondent's husband has already died as alleged by the applicant, the respondent was supposed to stand as an administrator of the estate of his late husband while pursuing the case concerning the properties of her late husband and not on her own capacity. The same was held in the case of **Lujuna Shubi Ballonzi Vs. Registered Trustees of Chama cha Mapinduzi** (1996)

TLR 203 where this court held that:

"In this country locus standi is governed by common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only



that the court has power to determine the issue, but also that he is entitled to bring the matter before the court."

Thus, in the case at hand, the applicant alleged that the respondent was supposed to represent her late husband as an administrator of the estate of her late husband and not to come in her own capacity. I certify this point of law accordingly.

The last point for certification is on whether the principle of adverse possession was considered by the 1st appellate court. The respondent's counsel alleged that this ground was never raised on the 1st appellate court hence it cannot be raised at this stage. This has been decided in a number of cases including the case of **Hassan Bundala @ Swaga Vs the Republic**, Criminal Appeal No. 386 Of 2015 (CAT-Unreported) where the court observed that:

"Indeed, as argued by the learned Principal State Attorney, if the High Court did not deal with those grounds for reason of failure by appellant to raise them there, how will this Court determine where the High Court went wrong? It is now settled that as a matter of general principle this Court will only look into matters which came up in the lower court and were decided; not on matters which were not raised nor decided by neither the trial court nor the High Court on appeal."

Hassan

Thus, guided by the cited authority this court finds no merit on this ground and the same is rejected accordingly.

For the foregone reasons, the application is allowed to the extent as demonstrated above. Costs of the application to be in the cause.

It is so ordered.



N.R. Mwaseba

N.R. MWASEBA

JUDGE

30.08.2022