

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. LAND APPLICATION NO. 145 OF 2022**

**(C/F Land Appeal No. 11 of 2022 in the High Court of Tanzania Arusha Registry, Land Appeal No. 4 of 2021 before the District Land and Housing Tribunal for Karatu at Karatu, Originating from Land Complaint No. 3 of 2019 before the Rhotia Ward Tribunal)**

**SARA SIASI.....APPLICANT**

**VERSUS**

**ROZIMARY SILVESTA.....RESPONDENT**

**RULING**

15<sup>th</sup> May & 23<sup>rd</sup> June 2023

**TIGANGA, J**

This is an application for the certificate on point of law for the applicant to appeal to the Court of Appeal of Tanzania against the judgment of this court in Miscellaneous Land appeal No. 11 of 2022. That was following the applicant's dissatisfaction with the impugned decision which was entered in favour of the respondent. As a matter of procedure, to pursue his right to appeal, the applicant lodged the notice of appeal to the Court of Appeal of Tanzania. However, the matter having originated from the Ward Tribunal, in terms of section 47 (3) of the Land Disputes Courts Act [Cap 216 R.E 2019] the person intending to appeal against the

decision of the High Court which is the second appellate Court, is required to seek for the Certificate from the High Court certifying that there is a point of law involved in the appeal, hence this application.

The application is preferred under the provision of section 47(3) of the Land Disputes Courts Act and is supported by the affidavit sworn by the applicant. Even though the applicant did not specify the points/grounds of appeal worthy of certification by this court but at least this court was able to grasp from the affidavit what the applicant intends to challenge. Gathering from paragraphs 5, 6, and 7 of the applicant's affidavit, the applicant is challenging the second appellate High Court's improper analysis of both lower Tribunal's evidence that the late Siasi Waree distributed his land.

Second, the second appellate court failed to nullify both the lower tribunal's proceedings and decisions while it noticed that parties lacked *locus standi* as they did not stand as administrators but in their personal capacities. Third, the applicant is challenging the act of declaring the deceased Gumbala to be the lawful owner of the suit land.

The respondent, on the other hand, opposed the application through her counter-affidavit and stated that it is indisputable that the

High Court entertained the matter on merit after analysing and evaluating the lower tribunal's evidence without leaving any stone untouched.

When the matter was scheduled for hearing, the applicant was represented by the learned counsel Anna Andrea, on the other hand, the respondent enjoyed legal services from Joseph Oleshangay of the Legal and Human Rights Center. The appeal was disposed of by way of written submissions.

Supporting the application, the applicant submitted that the respondent herein filed a suit as a legal representative of her late husband Gumbala Siasi and the applicant also was a legal representative of her late mother, Lucia Yaro. However, the records right from the ward tribunal and the appellate tribunal reveal that the parties herein appeared in their personal names therefore indicating that they were in their individual capacities and not as legal representatives which is contrary to the law. The applicant went further to state that, the court erred by declaring the late Gumbala as a lawful owner of the suit land while there is no estate in the deceased something which was noticed by the second appellate Court. To support her contention the counsel for the appellant cited the case of **Abulratiff Mohamed Hamis vs Mehboob Yusuph Osman and Another**, Civil Revision No. 06 of 2017, at pg 2 where it was held that,

the legal representative of the deceased was a necessary party, her nonjoinder was fatal and the trial Court either on its own accord or upon direction to the 1<sup>st</sup> respondent was enjoined to strike out the name of the first respondent and substitute to it her name with caption "as the legal representative of the deceased. This in the Court's view is a serious procedural irregularity which may seemingly cause injustice. Also see the case of **Peter Richard vs Masau Bujungu**, Land Appeal No. 10 2020, HC, Mkeha, J in which the importance of necessary parties before the court passes the effective decree. She insisted that suing and defending the case in the individual capacity instead of suing as the Administrator or personal representative is a point of law worthy of determination by the Court Appeal.

Replying to the above submission, the respondent argued that only pure matters of law should be referred to the Court of Appeal and that the High Court must ascertain the existence of those points of law. According to her, the parties at the trial tribunal appeared in their names and even in this case the applicant has filed this application in their personal capacities. Therefore, she was of the view that the issue of legal representative brought by the applicant in the submission is wanting in this case.

In the short rejoinder, the applicant reiterated his submission in chief and added that much as it was the respondent who filed a suit at the trial tribunal then it was her duty to sue the applicant as the legal representative.

Having considered the application together with the submissions presented by both parties, it is indeed the requirement of the law that no appeal shall lie to the Court of Appeal of Tanzania against the decision of the High Court where it originates from the Ward Tribunal unless the High Court has certified that there are points of law worthy to be considered by the Court of Appeal.

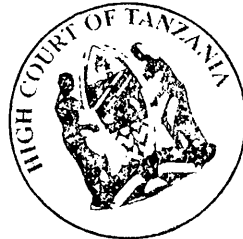
It is the argument of the applicant that, it was improper for the parties herein to sue in their personal capacities while they were all legal representatives. Reading from the judgment of this Court, the Honourable Judge while determining the appeal discovered that both parties stood suing and being sued in their personal capacity something which is wrong in law, however, the Hon. Judge went on to say that however since the proceedings, tribunal's judgments and documentary evidence (letters of administration of the estate of the deceased persons) depict that they stood as administrators, it was thus his firm view that failure by the tribunals and the High Court to insert the parties to the dispute as


administratixes of the estate of their late deceased persons cannot render the proceedings and decisions a nullity.

In my settled view, this is a legal issue that needs attention and clarification from the High Court as to whether it was proper for the parties to sue and be sued in their capacities. In the event, the above point is hereby certified to be considered by the Court of Appeal of Tanzania for determination.

It is accordingly ordered.

**DATED** and delivered at **ARUSHA** this 23<sup>rd</sup> June 2023



  
**J. C. TIGANGA**  
**JUDGE**