

TANZANIA / JUDGMENT

MISC

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB REGISTRY AT MUSOMA MISC. LAND
APPLICATION NO. 0000706 OF 2024 REFERENCE NO. 20240115000000706 (Arising from decision
of Hon. Mariey (Ext Jurisdiction) in Misc. Land Appeal 41 of 2023) BHOKE CHACHA
MAGOCHA..... APPLICANT VERSUS NYITAMBOKA
KITANG'ITA..... RESPONDENT

RULING

16th & 22nd July, 2024 M. L, KOMBA.J.: Applicant has filed chamber summons under section 47 (2) of the Land Disputes Courts Act, Cap 216 R.E 2019 (as amended) asking this court to certify the presence of point of law which has to involve the attention of the Court of Appeal. Application is supported by affidavit sworn by the applicant, BHOKE CHACHA MAGOCHA. From the record, Parties were contesting over a piece of land where the applicant claim to own it via her husband since 1993 while the respondent stated that he acquired in 1983. The 1st appellate court find Page 1 of 6 the applicant failed to prove her case to the balance of probability. She was dissatisfied and appeal to the High Court, Misc Land Appeal No. 41 of 2023 where Magistrate with extended jurisdiction dismissed the appeal for want of merit. Applicant, for another time was dissatisfied and fronted this court with chamber summons requesting certification on whether; Z The principle of tracing of ownership from the original owner was rightly applied by the second appellant court; ii. The visit in locus quo was not in accordance to law. During hearing, the applicant was represented by Mr. Emmanuel John while the respondent had legal service of Mr. Daudi Mahemba both being advocates. It was counsel for the applicant who started to prosecute his application by praying this court to adopt their affidavit and submitted that he was not satisfied the way principle of tracing ownership was applied by the second appellate court as featured in paragraph 5 of page 3. It was his submission that the principle needs a chain of ownership which when looked at correctly, was in favour of the applicant because respondent did not show how he came into possession of the disputed land. Page 2 of 6 Another point which counsel thought intervention of the court is visitation to the locus in quo where he claims it was not done as per dictates of law. He believes if visiting could be done correctly, decision could be in favour of the applicant. He finally prayed this application to be granted with costs. Mr. Mahemba resisted the application as there is no point of law in affidavit. He did not file counter affidavit but requested to submit on point of law and was allowed. First, counsel notified this court that applicant cited wrong provision and so he failed to move this court. So far as the

matter originated from Majimoto Ward Tribunal, he said, the applicant has to move this court under section 47 (3) of Cap 216. Further, he submitted that issues pointed by applicant are not legal issues to warrant the grant as the court need serious issue to be certified and cited decision of this court in John Waziri Mpanga vs Calvert, Misc. Civil Appl No. 23 of 2021 HC Mwanza and Martina Joakim Duko vs Bahati Turwai, Civil Appl No. 84 of 2022 and prayed this court to find there is no legal issue for certification and dismiss the application with costs. In his rejoinder Mr. Emmanuel submitted that the concept that the points are not qualified is not enough the counsel did not explain what Page 3 of 6 was not relevant. While subscribing to the cited authorities he said what are not correct in his application is missing. Regarding the first point he said there was amendment to Cap 216 and the relevant provision nowadays is subsection 2 and reiterates his submission in chief. Having considered the application's records and the submission advanced by each counsel, the duty of this Court lies to consider whether or not this application is meritorious. It is the trite law, that if a person is not satisfied by the decision of one court has to appeal to the higher court. As this application traces its root on land disputes which was previously handled at Ward Tribunal, section 47 (2) of Cap 216 (as amended) clearly provides for the right to appeal to the court of appeal upon proof of existence of point of law; 47 (2) 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. First of all, I wish to state from the onset that this is an application for certification on point of law so that applicant may appeal to the Court of Appeal and not an appeal. In certifying, there must be point of law worth to be addressed by the Court of Appeal as per dictates of law. Page 4 of 6 Applicant has two issues; the first issue is application of principle of tracing original owner over piece of land. Applicant faulted the 1st appellate court. I read the judgment and specifically at paragraph referred I find the analysis of Hon Magistrate that applicant started to own the land in 1993 while respondent started to own land in 1983. Arithmetically, it is respondent who started to own the land and therefore the principle of tracing original owner should be in favour of the respondent who started to occupy the land. First appellate court dismissed the appeal after the finding that respondent was the 1st to own the land. I find the principle was well applied. Another point raised by the applicant is visitation to locus in quo. Counsel just mention that it was not as per law without mentioning what went wrong. Generally, visiting locus in quo is a matter of evidence unless there is specific thing that need intervention which was not revealed. To mention the visitation to locus in quo was not as per law alone is not enough. The law is settled that the court certifying the point of law has to evaluate the proposed points of law and satisfy itself whether they are worth to be certified to the Court of Appeal. See Dorina N. Mkumwa vs Edwin David Hamis, Civil Appeal No.53 of

2017) [2018] TZCA 221. John Waziri Mpanga vs Calvert (supra), Page 5 of 6 Martina Joakim Duko vs Bahati Turwai (supra) and Silas Josiah Maradufu & Another vs Nyamsera Marumba (Misc. Civil Application No. 36 of 2023) [2024] TZHC 2273 (27 May 2024). I didn't find anything troubling to refer to the Court of Appeal as one point was a matter of evidence and another was handled as per law. In view of the discussion above, the applicant has no legal point(s) worth to be forwarded to the Court of Appeal as the third ladder. In the

circumstances, I am constrained to, as I hereby do, dismiss this application with costs.
DATED at MUSOMA this 22nd day of July, 2024. M. L. KOMBA Judge Ruling delivered in chamber in the presence of Applicant who appeared in person and in the absence of the respondent. kk M. L. KOMBA Judge 22nd July, 2024 Page 6 of 6

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