

TANZANIA / JUDGMENT

lameck orenda olwal vs simba so oressi 2021 tzhc 3382 31 may 2021

COURT
TZHCDECIDED
31 May 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY OF MUSOMA AT MUSOMA MISC. LAND APPLICATION NO. 40 OF 2020 {Arising from Misc. Land Appeal No. 3 of 2020 High of Tanzania at Musoma and the Land Appeal No 42/2019 of Tarime District Land and Housing Tribunal and Originating from Koryo Ward Tribunal land Application No 16 of 2018) LAMECK ORENDA OLWAL..... APPLICANT Versus SIMBA S/O ORESSI..... RESPONDENT

RULING

13h April & 31st May, 2021 J. R. Kahyoza, J; Lameck Orenda Olwal is seeking the certificate of this Court that a point of law is involved in the intended appeal to the Court of Appeal. He filed the application under section 47 (3) Land Disputes Courts Act, Cap.216 R.E 2019. Simba S/O Oressi opposed the application contending that there no legal issues for the Court of Appeal to consider. The issues is whether there is point of law involved in the intended appeal. A brief background is that; the High Court adjudicated Lameck Orenda Olwal the judgment debtor in Miscellaneous Land Appeal No 3/2020, a matter, which commenced in the ward tribunal. Simba S/O Oressi, the respondent who had lost the appeal in the District Land and i Housing Tribunal emerged the winner. Aggrieved, Lameck Orenda Olwal intends to appeal to the Court of Appeal. The applicant filed the application under section 47(3) the Land Disputes Courts Act, [Cap.216 R.E.], which requires him to obtain a certificate that a point of law is involved in the intended appeal. It stipulates that- "47(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." The duty of this Court under above cited law is to scrutinize or critically consider whether there are issues/points of law to be dealt by the Court of Appeal. This duty was pronounced by the Court of Appeal in Dorina N. Mkumbwa Edwin David Hamis (supra). It stated:- 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.

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 2 proposes as point of law to be perfunctorily forwarded to the Court as point of law. We are prepared to reiterate that Certificates on points of law for appeals originating from Ward Tribunals mark a point of finality of land disputes that are predicated on matters of fact. Certificates are designed to ensure that land disputes originating from Ward Tribunal come to an expeditious end, preferably in the High Court. On this stance, we abide with our earlier unreported decision in TIMOTHY ALVIN KAHOHU V. SAL UM ADAM MFIKIRWA, CIVIL APPLICATION NO. 215 OF 2013 where we restated that a decision of the High Court refusing to grant a certificate on a point of law under section 47(2) of Land Disputes Courts Act, is final and no appeal against it lies to this Court, (emphasis supplied) There is yet another decision of the Court of Appeal explaining the role of this Court when called upon to certify whether there exists a point of law for determination by the Court of Appeal. Agnes Severini V Mussa Mdoe [1989] TLR 164 (TZCA) " We wish to observe at the outset that this was an unsatisfactory way of certifying a point of law. That certificate is capable of two interpretations. It could mean posing the question whether there was any evidence at all to support the concurrent decisions of the courts below. It could equally mean to ask the question whether the evidence as adduced was sufficient to support and justify those decisions. How, this distinction is imported. The question whether there was any evidence at all to support the decision is a question of law which can properly be certified for the opinion of this court. But whether the evidence as adduced was sufficient to support the decision is a question of fact which could not properly be the subject of a certificate for the opinion of this court. For, this court takes the view that if there was some evidence on which the courts below could have arrived at the decision they did, 3 then this court will not interfere, even though had this court itself tried the case it might have come to a different decision. Those who are called upon to certify points of law should, therefore, keep this distinction in mind in order to ensure that only the correct questions are certified for the opinion of this court." The issue is whether there is point of law to be considered by the Court of Appeal. The applicant deponed and submitted through his advocate Mr. Stephen that there is point of law to be considered by the Court of Appeal that is whether it proper for trial tribunal and this Court to rely on oral evidence by the respondent who alleged to have been allocated the suit land by the village authority. The applicant's advocate submitted that the ward tribunal relied on unsworn evidence given when it visited the locus in quo. The contended that the evidence was not to be relied upon, to make decision. He prayed this Court to certify that there was a point of law. The respondent's advocate Mr. Onyango submitted that there was nothing disturbing to be considered by the Court of Appeal. He submitted that a certificate on point of law is not an outright, it is a discretion of the court. He added that the witnesses at the locus in quo are not witnesses who must be sworn first before they give evidence. He added that was issue raised was not a point of law but facts. The applicant's advocate rejoined that the evidence in this case given without complying with the law. The evidence this Court and trial tribunal considered was given at the locus in quo without following the law. It has been shown above that the issue is whether the applicant has disclosed a

point of law to be considered by the Court of Appeal. 4 I have considered the submissions. I have no doubts in mind that the issue raised does not constitute a point of law or a point of public importance for the Court of Appeal to consider. I know no law that requires that cases to be proved by documenting evidence. Oral evidence is as good as documentary evidence. If case solely depends on oral evidence, the trial court or tribunal has to make the findings which evidence is more reliable than other and give reasons. In the present case, the High Court relied heavily on evidence of the applicant to determine the appeal. It did not rely on the evidence given at the locus in quo. It also relied on section 15(1) of the Village Land Act, [Cap 114 RE 2019]. It is not true that it relied on the unsworn evidence given at the locus in quo. The applicant seeks to challenge the decision of the High Court and not that of the ward tribunal. The alleged error of relying on unsworn evidence, if it exists, it is the ward tribunal, which committed it and not the High Court. I am of the considered view that allow the applicant to go to the Court of Appeal to challenge the decision of the ward tribunal would amount to abuse of the due process. An appeal from the ward tribunal lies to the District Land and Housing tribunal. I am of the firm view that the applicant has not established a point of law to be considered by the Court of Appeal or the intended appeal has any public importance. The Court of Appeal insisted a point of law to be certified ought to be a legal point or a point, which is of public importance. In the case of Magige Nyamoyo Kisinja v. Merania Mapambo Machiwa Civ. Appeal No. 87/2018. It stated- 5 l/l/e 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 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. In the upshot, I find not point of law to be certified for determination by the Court of Appeal. For that reason, I dismiss the application with costs. It is ordered accordingly. J. R. Kahyoza JUDGE 31/5/2021 Court: Ruling delivered in the presence of the parties. B/C Catherine present. 6

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