

IN THE HIGH COURT OF TANZANIA

AT Mtwara

MISC CIVIL APPLICATION NO. 28 OF 2020

(Arising from Civil Appeal No. 30 of 2018 High Court Mtwara)

AHMED JABIRI MATENGANYA..... APPLICANT

VERSUS

MSHAMU MOHAMED NGUMBE.....RESPONDENT

RULING

25th Nov. & 14th Dec., 2021

DYANSOBERA, J.

In this application, the applicant Ahmed Jabir Matenganya is seeking for the following orders:-

- a) That court may be pleased to give leave and certificate within which the applicant's case is fit to be determined by the Court of Appeal of Tanzania,
- b) Costs be provided for,
- c) Any other order (s) or relief (s) that this Honourable Court may deem just to grant.

The application has been preferred under section 5 (2) (c) of the Appellate Jurisdiction Act [Cap 141 R.E.2002] and is supported by the

applicant's affidavit. The respondent has, through the counter affidavit resisted the application.

The main ground in support of the application is found under paragraph 7 of the applicant's affidavit which states that:-

"7. That with all issues which have been discussed in the former courts the judge and the chairman of the Tribunal have been failed to ascertain the crucial issue that the suit was not attended with the majority of three women or above at Mingumbi Ward Tribunal as required by law"

The hearing of this application was conducted by way of written submissions.

I have considered the application and the supporting affidavit. I have also taken into account the submissions advanced by the parties. The issue calling for determination is whether this application is competent. As indicated hereinabove, this application has been filed under Section 5 (2) (c) of the Appellate Jurisdiction Act [Cap 141R.E.2002]. Obviously, Section 5(2) (c) of the Appellate Jurisdiction Act governs a certificate that a point of law is involved in an appeal under the Magistrates' Court Act, Cap 11 R.E. 2002 originating from a primary court.

This legal position was well elaborated in the cases of **Omari Yusufu v Mwajuma Yusufu and Another** (1983) T.L.R. 29 and **Harban Haji**

Mosi and Another v.Omar Hila Seif, Civil Reference No 19 of 1997 (CAT, unreported), to mention but a few.

In the present matter, the appeal originated from Mingumbi Ward Tribunal. The proper provision of law applicable is for application and obtaining a certificate on points of law for an appeal originating from the Ward Tribunal is Section 47(2) of the Land Disputes Courts Act [Cap. 216 R.E.2019]. This means that the applicant has failed to properly move this court.

The omission by the applicant to cite section 47(2) is fatal. The following are cases in point: **Antony J. Tesha v. Anita Tesha**, Civil Appeal No. 10 of 2003 and **China Hanan Int. Cooperation Groups v. Salvand K. A. Rwegasira**, Civil Reference No. 22 of 2005 (all CAT, unreported).

Since the court has not been properly move, this application is incompetent. Consequently, it is struck out with costs to the respondent.

Order accordingly.



W. P. Dyansobera

Judge

14.12.2021



This ruling is delivered under my hand and the seal of this Court on this 14th day of December, 2021 in the presence of the respondent but in the absence of the applicant.



W.P. Dyansobera

Judge



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