

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

MISCELLANEOUS CIVIL APPLICATION NO 142 OF 2002

(Arising from Miscellaneous Civil Application No. 31 of 2002 and
Arusha Resident Magistrate's Court Civil Review No. 3 of 2001)

ELIPHASI LANGEIAPPLICANT

VERSUS

SANGAU KILAERESPONDENT**RULING****R.SHEIKH, J**

This is an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court (Hon. Msoffe J. as he then was) in Miscellaneous Civil Application No 31 of 2002. The application is brought under the provisions of Section 5(1) of the Appellate Jurisdiction Act No. 15 of 1979 and is supported by the affidavit of the applicant ELIPHASI LANGEI.

The brief background to this matter is that in Arusha High Court Bill of Costs No 5 of 2000 the respondent had successfully


objected to the execution of the decree the subject-matter of the aforesaid Bill of Costs. Thereupon the applicant filed Arusha Resident Magistrate's Court Civil Review No. 3 of 2001. He lost. The learned Resident Magistrate held that the decision granting an objection proceeding is appealable. The applicant then sought a revision of the decision in Arusha Resident Magistrate's Court Civil Review No 3 of 2001 by filing High Court Miscellaneous Civil Application No. 31 of 2002. On 11/12/2002 the aforesaid application for revision was dismissed with costs on the ground that the order sought to be revised is appealable, and that the applicant ought to have appealed. The applicant is aggrieved and is now seeking to appeal to the Court of Appeal. The applicant asserts that this court had erred in dismissing his application for revision, that the aforesaid decision has raised doubts as to whether an order rejecting an application for Review under the provisions of O.XLII of the Civil Procedure Code is appealable in terms of rule 7 of the said Order.

The respondent SANGAU KILAE has resisted this application in his counter-affidavit, and has asserted that the applicant ought to have sought a certificate of this court to the effect that there is a

point of law involved in the case fit for consideration by the Court of Appeal.

After careful consideration of the arguments on both sides I am satisfied that the reason advanced for seeking the leave to appeal is meritorious. The applicant is entitled to appeal to the Court of Appeal as the decision sought to appeal from has raised an issue of law, which of necessity must be determined by the Court of Appeal in the light of O.XLII rule 7 of the Civil Procedure Code. I am satisfied that it is eminently important for the Court of Appeal to decide the issue of law raised by the applicant i.e. " whether the High Court was legally justified in rejecting/dismissing the applicant's application for revision in the circumstances of this case, and in terms of O. XLII rule 7 of the Civil Procedure Code. In the result the application succeeds.

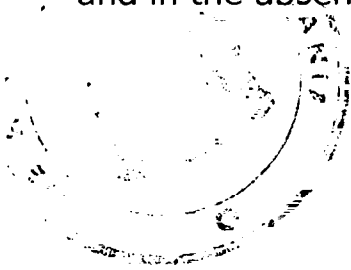
The application for leave to appeal is accordingly granted with costs.

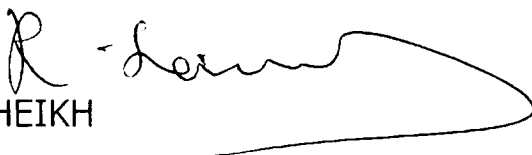

R. SHEIKH

JUDGE

20/08/2007

The Ruling is read this 6/09/2007 in the presence of the respondent
and in the absence of the applicant, and in the presence of Vero B/C.




R. SHEIKH

JUDGE

6/09/2007

/mm