

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
CIVIL APPEAL NO 34 of 2008

(Application for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court, Civil Appeal No. 34 of 2008-A. Shangwa, J.A. Mwarija and A. Nyerere dated 22nd June 2010)

RAPHAEL JUMANNE MTALIMA.....APPLICANT

VS

TANZANIA BREWERIES LTD.....RESPONDENT

RULING

Date of last Order: 01-03-2011

Date of Ruling: 13-04-2011

JUMA, J.:

After the Industrial Court of Tanzania had dismissed this applicant's application for revision (Industrial Court's Revision No. 18 of 2007), the applicant (Raphael Jumanne Mtalima) appealed to this court when he filed Civil Appeal No. 34 of 2008. In its judgment which was delivered on 22nd June 2010, this court (Shangwa, Mwarija and Nyerere, JJJ.) found that the Civil Appeal No. 34 of 2008 which the applicant had filed was without merit and proceeded to dismiss it with costs.

The applicant has come back to this court, this time around by filing this application under Rule 45-(a) of the **Court of Appeal Rules, 2009 GN 368 of 2009**. He is asking for leave of this court to enable him to lodge an appeal to the Court of Appeal of Tanzania against the Judgment and Decree of this court in Civil Appeal No. 34 of 2008. Tanzania Breweries

Ltd is the respondent in this application. Reasons to justify applicant's application for leave of this court are contained in his supporting affidavit which he filed in support of his application. The Applicant added other reasons on 1st March 2011 when he appeared in person to argue his application. Summarised from his affidavit and oral submissions, the applicant advanced the following points to justify his request to appeal to the Court of Appeal,

- 1) principles of natural justice were violated since he was not informed in advance the nature of accusations to be levelled against him at the interviewing panel;
- 2) he had never been employed by the Body Care Limited and respondent were wrong to seek his character references from this company;
- 3) officers of the respondent's company had no power to terminate his employment;
- 4) since his termination was already pre-determined by the respondent's executive director of human resources, the subsequent inquiry by the management was not free to make fair decisions; and
- 5) the Full Bench failed to find that the Fax which was alleged to have been written by Mr. Dan White was an afterthought since it was written one month after his termination of employment.

This application seeking leave of this Court to lodge an appeal to the Court of Appeal of Tanzania is opposed by the respondent Tanzania Breweries Limited. Tausi Abdallah affirmed a counter affidavit which was filed on 14th February 2011 basically contending that the applicant has not raised any point of law worth the attention of the Court of Appeal of Tanzania. According to the deponent (Tausi Abdallah),

paragraphs 1, 2, 3, 4, 5, 6, 8, 9, 10, 11 and 12 of the affidavit of the applicant disclose mere points of facts not worth consideration by the Court of Appeal.

When this application came up for hearing on 1st March 2011, Mr. Mbwambo the learned counsel representing the respondent reiterated that the applicant has not shown points of law worth consideration by the Court of Appeal.

I have carefully considered the application, supporting affidavit, counter affidavit together with oral submissions by the applicant in person and Mr. Mbwambo the learned counsel for the respondent. My opinion on whether the applicant has canvassed reasons worth further consideration by the Court of Appeal will be subscribed by settled guiding principles which Court of Appeal through NSEKELA, JA furnished in the case of **BRITISH BROADCASTING CORPORATION Vs. ERIC SIKUJUA NG'MARYO, Court of Appeal CIVIL APPLICATION NO. 138 OF 2004**. That is, in the granting the leave to appeal to the Court of Appeal, this court considers whether the grounds of intended appeal raise issues of general importance or a novel point of law or where the grounds of appeal show a prima facie or arguable appeal. In my opinion for purposes of application for leave, "point of law" means that in this application there are questions on either interpretation of law or a legal principle which requires further consideration by the Court of Appeal. With due respect, I agree with Ms Tausi Abdallah that the reasons which the applicant cited to justify the requested leave of this court disclose points of disputed facts but not points of law.

For the foregoing reasons, I hold and I am satisfied that the applicant has not raised any issues of general importance. Neither has he raised

any novel point of law or any arguable appeal worth the attention of the Court of Appeal. This application for leave to appeal to the Court of Appeal of Tanzania against the Judgment and Decree of the Full Bench of this court dated 22nd June 2010 is dismissed. Respondent is awarded the costs of this application.


I.H. Juma,

JUDGE

13-04-2011

Delivered in presence of: Applicant Raphael Jumanne Mtalima and Ms Tausi Abdallah (for Respondent).


I.H. Juma

JUDGE

13-04-2011