

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY]

AT ARUSHA

MISC- CIVIL APPLICATION NO. 47 OF 2017

(Originating from Civil Appeal No. 1/2016)

GEORGE WALTER MBWAMBO.....APPLICANT

VERSUS

NEEMA STEPHEN MUSHI.....RESPONDENT

RULING

Date of Last Order: 26/07/2018

Date of Ruling: 03/08/2018

BEFORE: S.C. MOSHI, JUDGE

The application is made under section 5 (1) (c) of the Appellate Jurisdiction Act, CAP.141, R.E.2002 and Rules 45 (a) and 47 of the Tanzania Court of Appeal Rules, 2009. The applicant prays for the following orders:-

- (a) THAT the honourable court be pleased to grant leave for the Applicant to appeal to the court of appeal of Tanzania against the judgment and decree of the high court in Misc. Civil Appeal No. 01 of 2016.
- (b) THAT the costs of this application be provided for.

(c) Any other relief the honourable Court may deem fit to grant.

During the hearing the applicant was represented by Fadhili Nangawe advocate whereas the applicant appeared in person.

The court ordered that the application be disposed of by way of submissions.

The court can grant the application for leave to appeal to Court of Appeal where there are contentious issues that are arguable by the court of appeal or where there are novel points of law that need to be resolved by the Court of Appeal; in this respect see the Court of Appeal the case of **RUTAGATINA C.L. Vs THE ADVOCATES COMMITTEE AND ANOTHER, Civil Application No. 133 of 2007** where the court set down the yardstick and legal principle upon which leave to appeal can be granted. In this case the court stated among other things that:-

"The position was aptly put by this Court in Civil Application No. 133 of 2004, British Broadcasting Corporation Vs Eric Sikujua Ng'maryo (unreported) where it was stated:

"Needless to say, leave to appeal is not automatic. It is within the discretion of the Court to grant or refuse leave. The discretion must, however be judiciously exercised and on the materials before the Court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal,

*(see; Buckle V Holmes (1926) all E.R. Rep, 90 at page 91).
However, where the grounds of appeal are frivolous vexatious
or useless or hypothetical, no leave will be granted"*

I have considered both sides' submissions. I am of the view that the applicant has successfully shown the points that can be considered by the court of appeal as stated in the case of **RUTAGATINA C.L. Vs THE ADVOCATES COMMITTEE AND ANOTHER** (supra)

I grant the application so the court of appeal can consider the following points:

1. The Honourable appellate judge erred in law and fact by holding that there was a presumption of marriage between the parties
2. The appellate judge erred in law by improperly ordering distribution of appellant's properties between him and the respondent while there is no valid marriage between the parties

That said, that application is granted and each party should bear its own costs.




S. C. MOSHI

JUDGE

03/08/2018