

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC LAND APPLICATION NO. 37 OF 2017

(Arising from HC Civil Appeal No. 16 of 2016 as per Hon. Moshi, J)

TANZANIA (2000) ADVENTURE LIMITED APPLICANT

VERSUS

RELIANCE INSURANCE

COMPANY (TZ) LIMITED RESPONDENT

I. MAIGE, J

RULING

The applicant has moved the Court, under section 5(1) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002, (henceforward "AJA") read together with rule 45 (a) of the Tanzania Court of Appeal Rules, 2009, for a grant of leave to appeal to the Court of Appeal of Tanzania ("CAT") against the decision of this Court in Civil Appeal No. 16 of 2016 as per Madame Judge Moshi. The application is supported by the affidavit of **Mr. John Faustin**

Materu, learned advocate and is opposed by the counter affidavit of advocate **Gwagisa K. Sambo** learned advocate.

In the affidavit in support of the application, the applicant has incorporated the proposed memorandum of appeal to read as part thereof. In her brief written submissions Miss. Beatrice Joseph, learned advocate for the applicant thinks that the grounds pinpointed in the draft memorandum of appeal suffice to demonstrate existence serious issues worthy of being considered by the Court of Appeal of Tanzania. The respondent through her counsel **Gwagisa K. Sambo** learned advocate has argued in the vice versa.

There appears to be a common understanding between the counsel as to what decisions of the High Court are appealable to the Court of Appeal as of right and what are appealable on leave. A decision of the High Court on appeal being not among those decisions which are automatically appealable under items (a) and (b) of section 5(1) (c) the Appellate Jurisdiction Act, requires leave of the High Court or Court of Appeal.

The rationale behind leave requirement cannot be explained much better than it was explained by the Court of Appeal of Tanzania in **SAIDI RAMADHANI MNYANGA VS. ABDALLAH SALEHE (1996)**, TLR. It is, if I can quote the words of the Court of Appeal, *"to spare the Court the specter of unmeriting matters and enable it to give adequate attention to cases of true public importance"*. The Court of Appeal clarified further in

BRITISH BROADCASTING CORPORATION VS. ERIC SIKUJUA,
CIVIL APPLICATION NO. 138 OF 2004 (UNREPORTED) that leave to appeal would not be granted "*where the grounds of appeal are frivolous, vexatious or useless or hypothetical*".

In dealing with the applications of this nature, the High Court is, in my opinion, also required to take cognizance of the constitutional protection of a right to appeal and of the cardinal constitutional principle that such a right cannot be restricted unless it is necessary so to do.

In accordance with the proposed memorandum of appeal that forms part of the affidavit, the applicant has demonstrated two issues in the intended appeal. **First**, whether this Court was right in holding that the applicant contributed into the occurrence of accident in question. **Two**, whether there was sufficient evidence on the record upon which this Court would reduce the amount of damages awarded by the **trial court**. In his written submissions, **Miss Betrice Joseph** has drawn the attention of the Court to some substances of evidence adduced at the **trial court** which in her view would establish that the accident was solely caused by the respondent. In its decision, the High Court reduced the amount of damages partly because the **trial court** did not take into account the contribution of the applicant into the damage in assessing damages.

In his submissions in rebuttal, **Mr. Gwagisa K. Sambo** has invited the Court to dismiss the application for being without merit. In his view, there

was sufficient evidence to establish contributory negligence on the part of the driver of the applicant. On the issue of reduction of the quantum of damages, it is the counsel submission that the damages was not specifically proved at the **trial court** as required by law.

From the submissions and counter submissions, it is apparent that the centre of the contention is not that the proposed grounds of appeal do not raise *prima facie* arguable issues but whether this Court was right in reducing the amount of damages awarded by the **trial court**. I do not think that I am a right person to make any comment on the question. It is only the Court of Appeal which may resolve it should the appeal be preferred.

For the foregoing reasons, I am settled in my mind that, the intended appeal is neither frivolous nor vexatious. It raises *prima facie* arguable issues that deserves attention of the Court of Appeal. Accordingly therefore, leave to appeal to the **CAT** against the judgment and decree of this Court in **High Court Civil Appeal No. 16 of 2016** is hereby granted with costs.

It is so ordered.


(SGD) I. MAIGE

JUDGE

06/09/2018

Date:- 6/9/2018

Coram: I. Magie, J

Applicant:

For the Applicant: Ombeni, Advocate.

Respondent

For the respondent: Mr. G. Sambo, Advocate.

C/C:- Mariam

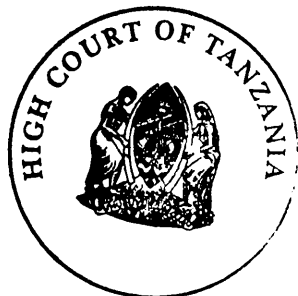
Court:- Ruling delivered. Prayer granted.

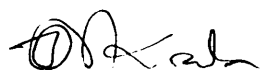

(SGD) I. MAIGE

JUDGE

06/09/2018.

I hereby certify this to be a true copy of the original.




J.F. NKWABI

DEPUTY REGISTRAR

ARUSHA

12/09/2018