

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

(DAR ES SALAAM REGISTRY)

MISC. CIVIL APPLICATION NO. 643 OF 2017

(Originating from High Court Civil Appeal No. 115 of 2017)

LEMMY PASCHAL BASHANGE.....APPLICANT

VERSUS

GRACE JULIUS MAKOA.....RESPONDENT

RULING

Last order date: 07th June, 2018

Ruling date: 29th June, 2018

MLYAMBINA, J

Aggrieved by the decision of this court dated 29th September, 2017, Lemmy Paschal Bashange "*herein to be refereed as the applicant*" lodged the instant chamber application supported with his affidavit intending to appeal against the judgment and decree of this Court (Sameji, J) to the Court of Appeal of Tanzania. The chamber application has been brought under Rule 45(a) of the Court of Appeal Rules, 2009 and Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 (R.E.2002).

One of the major ground advanced by the applicant in his affidavit is that the trial Court had no jurisdiction to entertain the application. The other issue advanced in the applicant's affidavit relates to wrong analysis of the evidences.

But in order to satisfy the requirement of lodging an appeal to the Court of Appeal, the applicant is required to obtain a leave from this Court. The granting or refusing to grant such leave depends on the existence of issue of general importance and arguable grounds which calls for the Court of Appeal's consideration.

The application was contested by the respondent Grace Julius Makoa. In the Counter affidavit sworn by her advocate Mr. Isaac Nassor Tasinga, the respondent stated that there has been no issue of contesting the jurisdiction of the trial court either at the trial stage or at the appellate stage. The respondent went further to state that the applicant failed to specify as to whose evidence was not considered by the learned appeal judge.

In view of the respondent, the applicant's resistance on the way the matrimonial properties were divided is not an issue which can compel this Hon. Court to grant leave as it does not carry weight to be considered by superior court-the Court of Appeal. Also, the ground that the trial court lacked jurisdiction is not worth to

consider as it has never been considered by the 1st appeal court as well the reason advanced for depriving the trial court does not carry any water to allow this court to grant as prayed by the applicant.

I have carefully gone through the submissions and especially that of the applicant. **Section 5 (1) (c) of the Appellate Jurisdiction Act Cap 141 (R.E.2002)** in which the application has been made. It provides; -

"In Civil Proceedings except where any other written law for the time being in force provides otherwise an appeal shall lie to the Court of Appeal with the leave of the High Court or of the Court of Appeal against every other Decree, Order, Judgment, Decision or Findings of the High Court"

In the case of **British Broad Casting Corporation Vs Erick Sikujua Namanyo, Civil Case No. 138 of 2004 at page 6-7**, it was stated that;

"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 arguable appeal"

Basing on the principles enunciated in the case of **British Broad Casting case** (*supra*), in determining an application for leave to appeal to the Court of Appeal of Tanzania, this Court or the Court of Appeal of Tanzania has to consider inter alia two grounds, to wit; -

1. Whether the appeal is arguable
2. If there is an issue of general importance

We are of further settled view that **Section 5 (1) (c) of the Appellate Jurisdiction Act** (*supra*) was not embodied for decoration purpose. It had a purpose of inviting the High Court to decide: **One**, whether a party who applies for leave have sufficient ground to go to the Court of Appeal of Tanzania. **Two**, whether there is any issue of principle to be determined by the Court of Appeal of Tanzania. **Third**, whether there is an injustice which is reasonably clear in the matters raised.

In this matter, the applicant has raised the issue of jurisdiction but it was not raised at appeal stage. I therefore find it to be an afterthought.

Upon going through the records in respect of this matter, in particular the decision of my learned sister her ladyship R.K Sameji, J, I find there is neither any issue of general importance to be

determined by the Court of Appeal of Tanzania nor arguable appeal to be considered by the Court of Appeal. The parties' intention is an abuse of the court process and wastage of the Courts valuable time. Indeed, if the application is granted it will cause the parties to suffer costs of cases unnecessarily. The application for leave to appeal is therefore dismissed for lack of issue of general importance. Costs be borne by the applicant.



Y. J. Mlyambina

Judge

29/06/2018

Dated and delivered this 29th day of June, 2018 in the presence of learned Counsel Deogratias Ogunde for the applicant and the respondent in person.



Y. J. Mlyambina

Judge

29/06/2018