

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION No. 34 OF 2019

MICHAEL J. T. NGALO.....APPLICANT

Versus

PANGEA MINERALS LIMITED.....1st RESPONDENT

RULING

25/07/ – 16/10/2019

J. A. De-Mello, J;

This Court has been moved by **section 5 (1)** of the **Appellate Jurisdiction Act Cap. 141R.E. 2002** for the following orders;

- a) Leave be granted to the Applicant to appeal to Court of Appeal of against the ruling/decision of the High Court (Arufani J.) given at Dar Es Salaam on the 21st of December in Civil Reference No. 1 of 2018.**
- b) Costs of this Application be borne by the Respondent.**
- c) The Hon. Court grants such other order(s) it may deem fit and just to grant.**

An Affidavit sworn by the Applicant himself, **Michael Joachim Tumaini Ngalo** is on record and. fended by **Counsels, James Bwana & Deogratius W. Ringia**, whereas; the Respondents enjoys the services of **Counsel Antonia Agapiti** in whose **Counter Affidavit** is sworn by **Diane Wamunza**.

Supporting the Application, **Counsel Inviolata** crave for the adoption of the Affidavit accompanying the Application for **Leave to Appeal to Court of Appeal** under **section 5(1) (c) of Cap. 141 RE 2002, Rule 45 (a) of Tanzania Court of Appeal Rules 2009** amended by **Rule 6 of TCA Rules of 2017**. Counsel drew the Court to **paragraph 11** of the Applicants Affidavit disclosing the illegality which the Applicants prefers the Court of Appeal to determine Counsel invited the Court to case of **Citi Bank Ltd vs. TTCL & 4 Others Misc. Commercial Cause No. 6 of 2003** in that regard. It is her view that, the issue is arguable for the Court to look into and, determine as she concluded for grant of Leave.

Vehemently opposing the said Application, **Counsel Antonia** also prayed for adoption of the Counter Affidavit sworn by **Diane Wamunza to form** part of her submissions. Cognizant of the discretion bestowed upon Courts for such grant, Counsel cited the case of **Nurban Rattansi vs. Ministry of Water & Energy & Hussein Hirji [2005] TLR 220** that nothing arguable nor triable has been evidence for the Court to consider as observed under **paragraph 6** of the Counter Affidavit. The Application has no basis and ought to be dismissed, she prayed.

In her brief rejoinder **Counsel Inviolata** reiterated her submissions in Chief discounting the submission by her opponent as baseless with no legal reasoning on them. **Paragraph 11 (a) (b) (c) (e) (f) & (g)** are pure points of law as opposed to the remaining, which are of facts alone.

Sadly, the dispute revolves around a Fee Note prepared and sent to the Respondent, by the Applicant who was acting as its Advocate. In as far as paragraph 6 of the Applicants Affidavit it is alleged that nothing had been

settled, wholly or partly. A Bill of Costs was heard and Taxed, awarding the Applicant **USD\$ 15,000.00** against the Fee Note. Aggrieved, a **Civil Reference** was lodged **No. 1 of 2018** in which **Arufani J**; enhanced the instructions fees to **USD\$ 60,000.00**, which did not impress the Applicant and the reason for this Application to Court of Appeal.

It is trite law that, before considering grant for **Leave to Appeal** to the Court of Appeal, the Court, must satisfy itself that, the Applicant demonstrates that, there is a point of law involved for the attention of the Court of Appeal. This is and will remain the position as was in the case of **Harbani Haji Mosi and Another vs. Omar Hi/at Seif and Another** in **Civil Reference No. 19 of 1997 (Unreported) Lugakingira J.A** (as he then was) who held alia that:-

“In order for the Application for Leave to Appeal to the Court of Appeal to be granted the following factors must be present:

- 1. The proposed Appeal stands reasonable chances of success.**
- 2. Where but not necessarily the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal.**

(Emphasis is mine).


In light of the case of **Principal Secretary, Ministry of Defence & National Service vs. Devram Valambhia [1992] TLR 185** the **Court of Appeal** re-stated the above holding;

“In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has the duty...for

the purpose to ascertain the point and, the alleged illegality be established, to take appropriate measure to put the matter and record right”.

In view of the prevailing circumstances, and, without much further ado, I find the Application with merit as I grant, **‘Leave to Appeal’** to the Court of Appeal of Tanzania, as prayed. They are arguable and triable issues requiring attention, consideration and, determination by the Superior Court.

Costs in due course.


J. A. DE-MELLO
JUDGE
16/10/2019