

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**  
**MISC. CIVIL APPLICATION NO. 703 OF 2018**  
**CHARLES ODEN MWAIHOLA.....APPLICANT**  
**VERSUS**  
**FINCA MICROFINANCE BANK.....1<sup>ST</sup> RESPONDENT**  
**BAYEYE INVESTMENT COM. LTD.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of Last Order: 12/9/2019*

*Date of Ruling: 31/12/2019*

**S.M. Kulita, J.**

Dissatisfied with the judgment and decree of the High Court of Tanzania at Dar es Salaam delivered on 12<sup>th</sup> October, 2018 in respect of Civil Appeal No. 11 of 2018 the applicant herein lodged this application seeking leave to appeal to the Court of Appeal. The application has been filed under section 5(1)(c) of Appellate Jurisdiction Act [cap. 141 R.E 2002]. It is supported by an affidavit deposed Mr. Audax Kahendaguza Vedasto, Advocate. During the hearing of the application the applicant enjoyed service of Mr. District Mwesigwe, learned Advocate.

In his submission in support of the Application Mr. District Mwesigwe stated that this application for seeking leave to appeal to the Court of Appeal of Tanzania is sought under Section 5(1)(c) of the Appellate Jurisdiction Act [Cap. 141 R.E 2002] which gives discretion to

the court among other things to grant or not to grant the application. The counsel cited the case of **ABOUBAKARI ALI HAMID V. EDWARD NYELUSYE, Civil Application no. 51 of 2007** at page 6 where the Court of Appeal of Tanzania mentioned things to be considered by the court for the court to grant extension of time, that is reasonable chances of success and the proceeding as a whole must reveal such disturbing features as to require the guidance of the Court of Appeal.

He submitted that in the current application para 4 of the Applicant's Affidavit shows that the applicant intends to challenge six ground of appeal.

The Counsel further submitted that in view of the 1<sup>st</sup> & 2<sup>nd</sup> ground of appeal in AA2 (Annexure of the intended petition of appeal) the High Court was awarded an interest of 17 Million from the date of filing to the date of judgment and to the date of payment but that relief was not appealed against at the High Court. The counsel submitted that it was therefore wrong for the High Court to award the amount which was not sought in the ground of appeal. He cited the case of **ESHIE MOSHI MBARAKA V. BIMKUBWA RAJABU& ANOTHER CIVIL Appeal No 581 of 2013 CAT at DSM at Pg. 12** to cement his argument. He said that it was not contended in the memorandum of appeal but the High Court granted. As for the 2<sup>nd</sup> ground in the intended appeal which is about interest, the counsel stated that this is another disturbing feature which require the Court of Appeal to grant direction. He mentioned article 13(3)A of the Constitution of the United Republic of Tanzania and said that it has not been complied with, as the applicant was not heard on the issue of Tsh. 17,000,000/= interest, that it was granted without the same being litigated at the High Court. Another disturbing feature

he did mention is the loan agreement that the court did not consider the fact that the agreement, in any difficult the Borrower was not duty bound to notify the Lender in case there is anything effecting the payment. The Lender informed the Borrower on the issue of theft but the appellate court didn't consider that in such circumstance the loan could not be paid on time. The counsel further contended that even the Respondent admits that there are points in law to be determined by the Court of Appeal.

In reply, Districh Mwesigwa learned Advocate for the respondent submitted that the 1st issue is the fact that the appellate judge awarded interest of Tsh. 17,000,000/= of which evidently was not standing on this point. He said that he finds it not an issue be legal or actual issue which needs interpretation. He argued that what the judge had stated is what is contained in the contract between the parties herein, that they agreed to borrow and pay in commercial interest. For the issue of clause 8.4 of the loan agreement it only placed obligation on the borrower to notify the lender in case of any problem in repaying the loan, and this was properly addressed by the trial judge at page 10 of the Judgment. Further the counsel is of the view that he does not see any reason (issues) to be addressed to the Court of Appeal of Tanzania.

I have given careful consideration on the submissions and arguments advanced by both parties to the application. It is my considered opinion that it is the discretion of the court in granting leave however, and as per the case of **ABUBAKAR ALI HIMID V. EDWARD NYELUSYE, Civil Application No. 51 of 2007** at page 6 Court of Appeal of Tanzania among other things, held that;

*"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal"*

At para 4 of the affidavit the applicant intends to challenge six ground of appeal as specified in annexure AA2 of the affidavit. Actually the said grounds reveal the picture that the guidance of Court of Appeal is required. From what have been submitted by the advocate for the applicant of which never strongly disputed by the Respondent's counsel I am satisfied that the applicant's intended grounds of appeal (annexture AA2) stand reasonable.

Under that circumstance, since the intended grounds of appeal reveal disturbing feature which requires the guidance of the Court of Appeal I accordingly grant the sought leave for the applicant to appeal to the Court of Appeal.



**S.M. Kulita**

**JUDGE**

**31/12/2019**