

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 14 OF 2019

(Application for leave to appeal to the Court of Appeal against the whole decision of the High Court in Civil Appeal on 221 of 2018 dated 13th December 2018 Madam Judge Munisi)

KADO MUSHI.....APPLICANT

VERSUS

SHAFIN FAZALRESPONDENT

RULING

Date of last Order: 09/10/2019

Date of Ruling: 04/12/2019

MLYAMBINA, J.

This application by way of chamber summons has been made under *Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 (R.E 2002)*. The applicant is basically seeking for this Honorable Court be pleased to grant leave permitting the applicant, being aggrieved by the decision of this Court delivered on 13th December, 2018 in Civil Appeal No. 221 of 2017, appeal therefrom to the Court of Appeal of Tanzania.

The application has been supported with an affidavit of January Raphael Kambamwene, an advocate of the applicant. I have noted four things from the reading of the supporting affidavit:

One, under paragraph 3 of the affidavit the applicant alleged to have already filed a notice of appeal indicating intention to appeal to the Court of Appeal, but such notice, in actual fact has not been annexed to the application.

Two, paragraph 4 of the supporting affidavit informs that the applicant has also written to the Registrar of The High Court of Tanzania Dar es Salaam Registry at Dar es Salaam to be supplied with certified copies of Proceedings, Judgement, Decree and any other document necessary for appeal purposes. Such letter in real fact, was not annexed to the application.

Three, under paragraph 5 of the supporting affidavit, the applicant deponed that the intervention by The Court of Appeal is necessary to take a fresh look at the legal principles that the first appellate Court applied (misapplied) in denying damages in tort to the appellant in circumstances of this case. Such misapplied principle has not been stated.

Four, under paragraph 6 of the supporting affidavit, the applicant testified that intervention of The Court of Appeal is necessary to correct the decision of the first appellate Court which was contrary to law, reason or common sense. The alleged error has not been specified for this Court to assess whether it is a point of general

importance or presents an arguable appeal. The respondent through the counter affidavit affirmed by Shafin Fazal disputed the application for three reasons:

First, the alleged letter to have been written to the Registrar of The High Court has not been annexed to the application.

Second, the alleged assertions that the first appellate Court misapplied the legal principles and denied damages to the appellant is not true.

Third, the decision of the first appellate Court was not contrary to the law, reason or common sense.

When the matter came for hearing counsel, Geoffrey Said conceded to the application. Despite of the respondent's admission to the application, I have noted that this is not a proper case to go to the Court of Appeal by appeal.

The first point for refusing this application is that both notice of appeal and the alleged letter sent to the Registrar of this Court are not part of the affidavit. It is my position that on affidavit being a substitute of oral evidence, has to contain all documents intended to be relied upon. In the case of *Bruno Wenceslaus Nyalifa v. the Permanent Secretary Ministry of Home Affairs*, Civil Appeal No. 82

of 2017 Court of Appeal of Tanzania at Arusha (unreported it was held:

"Affidavit is evidence and annexure thereto is intended to substantiate the allegations made in the affidavit. Unless it is controverted thereof, the document can be relied upon to establish a particular fact."

It is my further findings that lack of annexure of the notice of appeal and the deposition that the applicant wrote a letter to the Registrar of this Court are futile evidence as there is none to be verified in record.

The second point is that, for this Court to grant leave to appeal, there must be arguable grounds of law and issues of general importance. In this case, the applicant has not specifically stated such points or issues. In the case of *British Broadcasting Corporation v. Erick Sikujua Namanyo*, Civil Case No. 138 of 2004 at page 6-7 the court held;

"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."

This court in Misc. Civil Application No. 643 of 2017 between *Lemmy Paschal Bashange and Grace Julius Makoa* as cited in the case of *Balbir Sing Malaki v. Christa Jonas Wilson Msele*, Misc. Civil Application No. 188 of 2017 (unreported) went further to state that; *Section 5 (1) of the appellate jurisdiction act (supra) was not embodied for decoration purpose. It has 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. Three there is an injustice which is reasonably clear in the matters raised.*

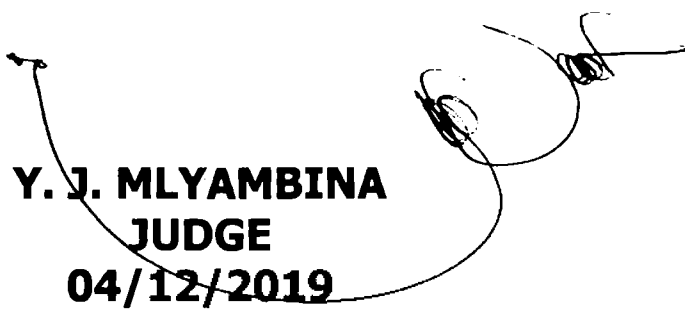
In the present matter, I dare to observe that the applicant has not met the above three thresh hold of exercising his appeal right to the Court of Appeal.

In the event, I hereby dismiss this application for lack of merits. Since the respondent conceded to the application, I award no costs. Order accordingly.



Y. J. MLYAMBINA
JUDGE
04/12/2019

Ruling delivered and dated this 04th December, 2019 in the absence of both parties.



Y. J. MLYAMBINA
JUDGE
04/12/2019