

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

MISC. CIVIL APPLICATION No. 35 20F 2019

ZAIDI BARAKA.....APPLICANT

Versus

KALUNDWA GENERAL TRADERS LTD.....RESPONDENT

RULING

19th March, – 5th May 2020

J. A. DE-MELLO J;

The Court has been moved under **section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 and Rule 45 (a) & 47 of the Tanzania Court of Appeal Rules, 2002**, supported by the Affidavit of **Audax Kahendaguza Vedasto**. The Applicant, is seeking for grant of Leave to Appeal to the Court Appeal against the decision of the High Court of Tanzania Dar Es salaam, District Registry at Dar Es salaam, in **Civil Revision No. 15 of 2015**.

Both parties were duly represented by Counsels... and... for the Applicant and Respondent respectively and in agreement for this Application to be disposed by way of written submissions whose scheduling orders have not been adhered to by the Respondent. Legally and practically, the matter and unopposed is granted. I need not waste the Courts constraining and valuable

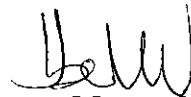
time to go through the said submissions which my reading have established good and sufficient reasons advanced by the Applicant. The cases referred to of **Haji Mosi & Another vs. Omari Hilal Seif & Another [2001] TLR 409** and, that of **Abubakar Ali Himid vs. Edward Nyelusye Civil Application No. 51 of 2007 Court of Appeal of Tanzania**, where chances of success were considered. He even referred the cases **Ngerengere Estate Co. Ltd vs. Edna, Misc. Land application No. 98 of 2014** and **Tanzania Electrical supply Co. Ltd vs Israel Kwayu, Civil Application No. 118 "A" of 2015**, that the grounds of Appeal annexed in the Memorandum of Appeal speaks louder in that endeavor as deponed under paragraph 3 of the Affidavit. He even cited a case of **Amani Mashaka (Applying as Administrator of Estates of Mwamvita Ahmed deceased) vs Mazoea Amani Mashaka & 2 others, Civil Application No. 124 of 2015** to challenge the Judge's holding that it was Appeal as opposed to Revision in which this Application if granted will address. Revision No. 15 of 2015 the High Court erred in holding that the Applicant was to satisfy a decree while neither a judgment debtor nor party to the Civil case No. 294 of 2008. Parties were not even invited to address some of the issues which is fatal. **Scan- Tan Tours Ltd vs Registered Trustees of the Catholic Diocese of Mbulu Civ. Appl. No. 78 of 2012**, in expounding the point that a Decree cannot be enforced against the person not a party in the suit as it was observed in **Oysterbay properties' Ltd and Another vs Kinondoni Municipal Council & 2 Others** and **Patrick Rutabanzibwa & 2 Others, Civil Revision No. 4 of 2011**.

I am impressed with the findings of the High Court in **Six Telecoms Company Limited vs. Capital Properties Ltd. ROPERTIES LIMITED, Misc. Land Case Application No. 269 of 2017**, where his Lordship **Kente J**; shared the same view with the findings in the case of **Rudolf Temba & Another vs. Zanzibar Insurance Corporation, Civil Application No. 167 of 2008** which quoted the English case of **British Broadcasting** that;

“Leave to Appeal will be granted where the grounds of appeal raise issues of general importance, a novel point of law or where the grounds show prima facie or arguable appeal”

As echoed earlier on and on the basis of the above authorities, the Application unopposed, let the matter reach the Superior Court for its attention and determination.

I hereby grant the prayer.



J. A. DE-MELLO

JUDGE

05/05/2020