

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**  
**MISCL CIVIL APPLICATION NO. 829 of 2018**  
**(Arising from Civil Appeal No. 24 of 2017)**

**FRED EDWARD .....APPLICANT**

Versus

**MICK MWACHILO.....1<sup>st</sup> RESPONDENT**

**SAMSONI MWACHILO.....2<sup>nd</sup> RESPONDENT**

**RULING**

16<sup>th</sup> April - 5<sup>th</sup> May, 7<sup>th</sup> May, 19<sup>th</sup> May, 28<sup>th</sup> May, 2<sup>nd</sup> June, 2020.

**J. A. DE-MELLO J;**

It is an Application for **Leave to Appeal** to the **Court of Appeal** against **Judgment** and **Decree** of this Court in **Civil Appeal No. 24 of 2017** dated **17<sup>th</sup> December, 2018** before **Hon. Arufani, J**; The Court is moved under **section 5 (1) (c)** of the **Appellate Jurisdiction Act Cap. 141** supported Affidavit of the Applicant himself, one **Fred Edward** and, countered by the Joint Affidavit of the two Respondents, **Micky Mwachilo** and, **Simon Pius Armando Swenya**, learned Advocate fending the Applicant, while the Respondents enjoys the services of **Barnabas Luguwa**, learned Advocate. Written submissions have been preferred by Counsels and, I see compliance.

It is Counsel's submission that, the substitution of **TShs. 30,000,000.00** (Thirty million) to **TShs. 5,000,000.00 (Tanzanian Shillings five million)** was illegal.

For clarity, the grounds in which the Applicant bases this Application in which he believes the Court of Appeal needs to address are as follows;

- 1. Whether the 1<sup>st</sup> Appellate Court has jurisdiction to alter or substitute an award of General Damages awarded by the trial court.**
- 2. Whether the Trial Court speculated on awarding the General Damages and did not follow principles of law.**
- 3. Whether the Trial Court has awarded General Damage?**

In response, **Luguwa Counsel** for the Respondent, countered the Application submitting that, it was correct to alter the award, general in nature, considering the discretion the Court has, in the event it finds it to be unfair.

I find it needful to note that, it a founded principle of law that to grant of Leave or not, is purely discretionary upon the Court, judiciously though, as was laid down in the case of **Rutagatina C.L. vs. The Advocates Committee and Another, Civil Appeal No. 98 Of 2010**. However, in exercising such discretion, Courts are guided rather cautioned to consider **whether the prosed Appeal stands reasonable chance of success** or **where the Proceedings as a whole reveal such a disturbing as to require the guidance of the Court of Appeal**. **Harban Haji Mosiand Another vs. Omar Hilal Seif And Another [2001] TLR 409 CAT**, and, **Abubakari Ali Himid vs. Edward Nyelusye, Civil Application No. 51 of 2007 CAT (Unreported)**.

In the case of **Rutagatina C.L. (supra)** vs. the Court of Appeal stated that and, I quote;

**“Leave is grantable where the prosed appeal stands reasonable chance of success or where but not necessarily, the proceedings as a whole reveal such a disturbing as to require the guidance of the Court of Appeal”**

Going through the Applicant’s Affidavits in paragraphs **4, 5** and **6** as well as **paragraph 2** of the **Respondent’s** joint Affidavits, I am convinced and, of a considered view that, there are serious matters worth to be considered by the Court of Appeal, not only on substitution but more complex, it being **General** or **Specific damages**.

On this strength I grant the Application with cost.

I so order.

  
**J. A. DE-MELLO**  
**JUDGE**  
**2/6/2020**