

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

MISCELLANEOUS CIVIL APPLICATION NO.575 OF 2019

(Arising from the Judgement and Decree of the High Court of Tanzania
in Civil Appeal No. 190 of 2008 dated 23rd September 2019)

1. **The Registered Trustees of Biafra
Secondary School**
2. **Usafirishaji Mikoani Union Ltd**

}-----**APPLICANTS**

VERSUS

Enock Daniel Makenge T/A

Unilife Group Investment-----RESPONDENT****

RULING

Date of last order: 02.04.2020

Date of Ruling: 05.06.2020

Ebrahim, J.:

The applicant herein has lodged the instant application praying for leave to appeal to the Court of Appeal against the decision of this Court in Civil Appeal No. 190 of 2018. The application is supported by the affidavit of Mashaka Ngole, Counsel for the applicant. The application has been brought under the provisions of **Section 5(1)(c) of**

the **Appellate Jurisdiction Act, Cap 141 RE 2002 and Rule 45(a) of the Court of Appeal Rules, 2009 as amended by GN No. 362 of 2017.**

The respondent herein had initially in 2003 sued the applicants following a contractual agreement entered between them to supply the applicants with the students' desks and chairs. The matter ended in favour of the applicants. Aggrieved, the respondent appealed to this court where the case was ordered to be tried de novo. Back at the trial court, the respondent prayed to amend the plaint and introduced Enock Daniel Makenge t/a Unilife Group Investments as the plaintiff and Registered Trustees of Biafra as the first defendant. The case was decided in favour of the respondent. The applicants were aggrieved and unsuccessfully appealed before this faulting the trial magistrate to entertain an incompetent suit which introduced new parties by way of amendment among other grounds of appeal; hence the present application.

In this application, the applicant is represented by advocate Temu and the respondent is represented by advocate Mwarabu.

Following the prevailing pandemic, the court ordered the application to be argued by way of written submission and set a schedule thereat. Both parties adhered to the set schedule.

Submitting in support of the application Counsel for the applicants mainly insisted on the criteria requisite for the court's consideration in granting leave. He cited a number of cases to support his argument including **British Broadcasting Corporation Vs Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004(CA); and **Yahaya Rajabu Vs Ibrahim Salum Tahfif and Ahmed Salum Tahfif**, Miscellaneous Land Case Application No. 4 of 2009 (HC).

He argued that paragraph 13(a)(b) and (e) of the Applicants' affidavit constitute novel point of law; and paragraph 13(a)(b)(c)(d) and (e) demonstrates arguable appeal.

Responding to the Counsel's for the applicants' submission, Counsel for the respondent challenged the applicant's application on the basis that the affidavit and the submissions do not show points of law for consideration by the Court of Appeal.

In rejoinder, Counsel for the applicant contended that Counsel for the Respondent is mixing up between the 2nd appeal and the 3rd appeal

which requires certification on the existence of point of law. I join hands with him and would not dwell on this argument raised by the Counsel for the respondent.

Court of Appeal clearly stated in **Harban Haji and Another Vs. Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997 (unreported) that:

“Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole revealed such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the specter of unmeriting matters and to enable it to give adequate attention to cases of true public importance”

From the above quotation, leave is granted where there are prima facie grounds meriting an appeal before the Court of Appeal. The essence of leave is to ensure that the Court of Appeal is saved from the menace of unmeritorious matters and wisely concentrate on matters of public importance, law, and or contentious issues that need its guidance.

I have thoroughly gone through the affidavit filed by the Counsel for the Applicants and followed his submission particularly at para 13 of the affidavit which carries the main complaint of introduction and replacement of a competent party in a suit by amending the plaint.

In my view the issue as to whether legally and procedurally a proper party can be introduced and replaced in the plaint by amendment of a plaint is one of important issues that require guidance of the Court of Appeal. As to whether the appeal stands reasonable chances of success, this court has no say on that considering the fact that each case is determined in its own facts and circumstances.

It is on those circumstances that I proceed to grant the application for leave to appeal to the Court of Appeal. Costs shall follow the outcome of the appeal.

Accordingly ordered



A handwritten signature in black ink, appearing to read "R.A. Ebrahim".

R.A. Ebrahim

Judge

Dar Es Salaam

05.06.2020