

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MBEYA DISTRICT REGISTRY**

**AT MBEYA**

**MISC. CIVIL APPLICATION NO. 7 OF 2020**

*(Arising from the decision of the High Court of Tanzania at Mbeya, Civil Appeal No. 12 of 2017 Original Civil Case No.63 of 2016, District Court of Mbeya)*

**NASORO RASHID AHMED..... APPLICANT**

**VERSUS**

**1. CHESCO FRANCE NG'UMBI**

**2. NUTA GODFREY MGAYA**

**..... RESPONDENTS**

**RULING**

*Date of last Order: 09.07.2020*

*Date of Ruling: 29.07.2020*

**Before: Mambi, J.**

This Ruling emanates from the application filled by the applicant (**NASORO RASHID AHMED**) for leave and certificate to to appeal to the Court of Appeal. The applicant filed a chamber summons application under Section 5 (1) ( c) of the Appellate Jurisdictions Act Cap 141 [R.E.2002] and Rule 45 (a) of the Court of Appeal Rules 2009. The applicant prays to this court to grant leave to enable him

to appeal to the Court of Appeal against the Judgment made by this Court under Hon.Judge Mongela. During hearing, the applicant appeared under the service of K.Mwita, the laered Counsel , while the respondent was epresented by Ms Mary Mgaya, the learned Cousel. The applicant Counsel submitted that the applicant has been aggrieved by the decision made by this Court that is why he is intending to appeal. He argued that he has several points of law to address at the court of appael. One of the point he mentioned in his submission is; whther by nnexing a valid court judgment in written submission amounts to production of evidence or not.The learned Counsel argued that the judge erred by accepting the of Court Appel in TUICO (TLR 2005) P 41 while there was the recent decision of the Court of Appeal in Bruno vs Permanent Secretary Minstry of Home Affairs Civil Appeal No.82 of 2027. In his second point of law, the applicant Counsel sub,itted that the Court of Appeal needs to consider as to whther time spent in litigation of another case in dfifferent court should be disregared in computation the limitation period of time.

In response, the Respondent Council Ms Mgaya briefly submitted that the applicant has not indocated any point of law that will eneble the Court of Appeal to entertin the intended appeal. She argued that the Judge correctly made the decision by expunging the decision annexted by the applicant as it didi not form part of the evidence as prat of submission .

the Respondent Council Ms Mgaya further submitted that the matter of time limitation can not be regarded as point of law since that matter was already determined by the Judge.

I have keenly perused the documents and considered the submissions made by both parties to find out whether this court has been properly moved and whether this application has merit or not. The key issue is whether the applicant in his application has indicated any point of law that persuade this court to grant leave to appeal to the Court of Appeal or not. In other words this court needs to determine as to whether there are points of law that has been raised by the applicant to enable this court to grant a certificate for him to appeal to the court of appeal. It is the settled position of the law that for the court to consider an application for leave to appeal to the court of appeal, there must be point/s of law to be determined. It is also a legal principle that grant of leave or certificate to appeal to the Court of Appeal is a discretionary to the court.

The law on this point is very clear on what should court consider before granting leave for an application for leave or certificate to appeal to the Court of Appeal of Tanzania against the judgment and Orders given by this Court as I alluded above. It is clear that the Judgment which is intended to be appealed was made by this court in the exercise of its appellate jurisdiction. This means that the applicant was right to file an application under Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 [R. E. 2002]. However, before the High court grant leave to appeal to the court of law the applicant

must clearly show the points of laws that were not determined by the Judge who made the decision against him.

The requirement for showing point/points of law for any party seeking for leave to High Court to appeal to court of Appeal is provided under the Appellate Jurisdiction Act, Cap 141 [R.E.2002]. This is under the section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 [R.E.2002] which provides that:

*“no appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High Court certifies that a point of law is involved in the decision or order”*

This was also underscored by the Court of Appeal in **NELI MANASE FOYA VS DAMIAN MLINGA, MISC.APPEAL NO.19 of 1999** at pages 2 and 3.

The question is, did the applicant indicate any point of law as required by the law?. The applicant through his learned counsel has submitted that failure for the presiding judge to consider Judgment of the Court of Appeal that was annexed to the submission is the point of law to be determined by the Court of Appeal while the respondent Counsel contended that this was not point of law. I have perused the Judgment made by the Judge and satisfy myself that the judge was right in her decision. The position of the law is clear that a submission is the a summary of evidence and can not be used as evidence and any annexure attached need to be expunged. See TUICO and Mbeya Co Ltd vs Mbeya Cement Co.ltd & NIC [2005] TLR 41. In

this regard I don't see any point of law that need to be considered by the Court of Appeal apart from unnesesarliy wasting time of the court.

With regaord to time limitation as point of law, my perusal show that the Judge conisreded this matter. If one look at the Judgment made by the Judge at pages 6, 7, 8 and 9 it is clear that the applicant has not showed the grounds or the so called point of law pointed out on his affidavit. Indeed the judge considered these grounds and found that the applicant failed to account days for his delay. However, being engaged in another different litigation as clamied by the applicant Counsel can not be said as good cause for delay and this can not be ajustification for counting days for delay. This in my view is not a point of law though still the Judge had alredy determined and made a dcison with reasons.

This court has in numerous decisions held that leave to appeal to the Court of Appeal can only be granted where the proposed appeal stands reasonable chances of success and the applicant has clearly pointed out the points of law in his affidavit. I am also aware that leave to appeal is not automatic rather it is discretionary. Looking at the affidavit by the applicant, I find that the applicant has not established that there are points of law that need to be determined by the court of appeal.

Indeed the provisons of the law are very clear on what should court consider before giving certificate for an application for leave to appeal to the Court of Appeal of Tanzania against the judgment and Orders given by this Court. This is founded under the section 5 (2) (c) of the

Appellate Jurisdiction Act, Cap 141 [R.E.2002]. That provision provides that:

*“no appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High Court certifies that a point of law is involved in the decision or order”*

Under this provision of the law, the High Court is required to scrutinize and determine that there point/s of law are involve before an appeal could be entertained by the Court of Appeal. I have perused the judgment of this Court and the application filled by the applicant, but I don't see any point of law to justify me and this court to grant leave for the applicant to appeal to the Court of Appeal as there is no any point of law indicated by the applicant. The applicant has not indicated any point of law and sufficient reasons other than wasting time. Indeed the applicant has not raised any point of law related to the two issues he has raised in his affidavit. It should also be noted that leave to appeal to the Court of Appeal is not automatic, one must show the points of law to be determined and must adduce clear grounds of the intended appeal.

In light of what I have observed and reasoned, that my hands are tied up by the decisions of my previous Judges, I don't see any need for further discussing this application rather than dismissing it. In my considered view, the intended appeal stands no reasonable chances of success as both issues raised by the applicant were properly determined by the Judge. I am of the consider view that entertaining



this kind of similar application in the same court is wastage of the time of this court and both parties. I wish to refer the decision of the court in ***Joseph Ntongwisanguue another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005*** (unreported) where it was held that:

*“... Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court.*

In all the circumstances, I am satisfied that the case (application) has no merit since the applicant failed to point out any point of law to warrant this court to give certificate or leave to appeal to the Court of Appeal. I am of the settled view that the application at this court was rightly determined and there is nothing that can be regarded as point of law to justify the intended appeal to the court of Appeal. In the result, I dismiss the application in its entirety. Given the circumstance of this case, I make no orders as to costs. It is so ordered.



**DR. A. J. MAMBI**

**JUDGE**

**29.07. 2020**


Ruling delivered in Chambers this 29<sup>th</sup> day of July 2020 in presence of both parties.



**DR. A. J. MAMBI**  
**JUDGE**

**29.07. 2020**

Right of appeal explained.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

**DR. A. J. MAMBI**

**JUDGE**

**29.07. 2020**