

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO. 20 OF 2020

(Originating from Civil Appeal No. 5/2018)

SANDHU COACH LIMITED AND ANOTHERAPPLICANTS

VERSUS

CHRISTINA BIGAMBO JEJE

(Administratrix of the Estate of the late

Bigambo Jeje)RESPONDENT

RULING

01 & 09.07.2020

RUMANYIKA, J.:

Application by Sandhu Coach Limited and another (the applicants) is for leave to appeal to the Court of Appeal of Tanzania is, with respect to judgment and decree of 11/10/2018. It is supported by affidavit of Obeid Elias Mwandambo learned counsel for the applicants whose contents he adopted during the hearing. Mr. Vedastus Laurean learned counsel appeared for Christina Bigambo Jeje administratrix of the estate of the late Bigambo Jeje – “the respondent”. The application is brought under Section 5 (1) (c) of the Appellate Jurisdiction Act and Order XLIII Rule 2 of the Civil Procedure Code Chapters 141 and 33 RE 2019 respectively and Rule 45 (a) of the Court of Appeal Tanzania Rules, 2009.

Following the outbreak of Coronavirus Pandemic and pursuant to my order of 26/5/2020 the parties were, by way of audio teleconferencing heard through mobile numbers 0779999007 and 0784971897 respectively.

Mr. Obeid Mwandambo learned counsel in a nutshell submitted that granting or not granting the application it depended on the court's discretion provided, like it was the case here there was prima facie grounds (paragraphs 7,8, 9 and 10 of the supporting affidavit) and the intended appeal stood chances of success much as there was, in the impugned decision some errors and misdirection the judge having ignored the grounds of appeal presented before him instead he sat and determined it as trial magistrate. That's all.

Mr. V. Laurean learned counsel adopted contents of the counter affidavit and submitted that the application was devoid of merits as no errors / misdirection was categorically singled out and the evidence was properly evaluated so much that there was nothing to fault the judge. That is all.

The issue is whether there was, in the intended appeal serious points determinable by the Court of Appeal of Tanzania (case of **Nurbhai N. Rattansi V. Ministry of Water Construction Energy Land and Environment & Another** (2005) TLR 220 CA)

The applicant may have believed that the impugned judgment and decree was tainted with a number of errors and misdirection yes, but as said, and this one should have been vividly established in the supporting affidavit, it is not about applicant's belief but prima facie and serious points by way of appeal determinable by the Court of Appeal that counts not

omnibus complaints. This however should not be mistaken for the court at this moment asking for grounds of appeal.

In determining an application for leave this court neither rehears the matter nor assumes powers of the Court of Appeal of Tanzania, the court is duty bound to filter what was and what was not worth to be determined by the Highest fountain of justice and, in so doing however this court is not expected to search for or establish for the applicant the points upon which to grant leave. Only the applicant had the obligation but here he has failed. The application lacks merits and it is dismissed with costs. It is ordered accordingly.



S. M. RUMANYIKA

JUDGE

06/07/2020

The ruling delivered under my hand and seal of the court this 9/7/2020 in absence of the parties with notice.



S. M. RUMANYIKA

JUDGE

09/07/2020