

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MBEYA)  
AT MBEYA**

**MISCELLANEOUS CIVIL APPLICATION NO. 34 OF 2019**

(From the High Court of Tanzania at Mbeya in DC Civil Appeal No. 05 of 2016. Originating from RMs Court of Mbeya at Mbeya in Civil Case No. 04 of 2015.)

**BRYSON NDOGOMA MTEPA.....APPLICANT**

**VERSUS**

**TEMBO COFFEE COMPANY.....RESPONDENT**

**RULING**

Date of Last Order: 06/05/2020  
Date of Ruling : 02/07/2020

**MONGELLA, J.**

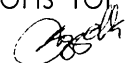
The applicant herein is seeking for leave to appeal to the Court of Appeal against the decision of this Court (Ndunguru, J.) in Civil Appeal No. 05 of 2016. He has filed the application under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002. The same is supported by the affidavit of the applicant. The applicant appeared in person while the respondent was represented by Mr. Lusiu Peter, learned advocate. It was argued by written submissions.

In his submission, the applicant stated that the main issue of contention making him to seek for leave lies with the interpretation of the contract

entered between the parties. He contended that the parties entered into a loan contract of T.shs. 20,000,000/- but the respondent breached the same by issuing to him T.shs, 10,000,000/-. He challenged the findings of this Court that there was no breach of contract.

He further argued that there is also a point of law involved wanting the attention of the Court of Appeal. The said point of law is to the effect that this Court held that the appellant admitted to have obtained a loan of T.shs. 42,000,000/- while the said alleged loan was for paying labourers. He argued that there were misapprehensions and mis-directions on the part of the first appellate Court as to what had actually happened between him and the respondent, which led to miscarriage of justice. He further addressed the opposition set forth by the respondent under paragraph 4 of the respondent's counter affidavit to the effect that the appellant has not advanced any point of law worthy of consideration by the Court of Appeal. He contended that the lack of point of law does not affect his application because this matter emanated from the RMs court whereby one does not need to show the existence of a point of law to appeal to the Court of Appeal. Citing the case of **Faustina Kanyasa v. Neva Kanyasa and Another**, Misc. Land Application No. 108 of 2016 (HC at Mbeya, unreported), he argued that one can appeal on points of fact to the Court of Appeal where the matter emanates from the RMs or District Court. He prayed for his application to be granted.

In reply, Mr. Peter opposed the application. He argued that it is settled law that leave to appeal is not automatic, but discretionary. He said that the discretion therefore has to be exercised judiciously whereby reasons for



the appeal must be provided. He cited the case of **Harban Haji Mosi & Another v. Hilal Seif & Another** [2001] TLR 409 in which the Court of Appeal held:

*"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purposes 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."*

Basing on the above decision, Mr. Peter argued that there is no reason at all to grant the applicant leave to appeal to the Court of Appeal. He challenged the reasons advanced by the applicant arguing that there is clear evidence on record supporting the decision of the High Court. He said that the evidence on record shows that the appellant received more than T.shs. 20,000,000/-. That, the appellant made clear and unqualified admissions that he received T.shs. 42,000,000/- from the respondent. He challenged the claim by the applicant that he received the said T.shs. 42,000,000/- for paying labourers contending that the said issue or claim has been brought at the stage of this application for leave. It does not feature in the trial court record.

With regard to the point of law, Mr. Peter argued that what they meant under paragraph 4 of the counter affidavit was not that a point of law is required; rather they challenged the alleged point of law raised on paragraph 5 of the applicant's affidavit. On this they argued that the same does not qualify as a point of law. He concluded that the applicant



has failed to advance reasons to warrant this Court to grant the leave applied for. He prayed for the application to be dismissed with costs.

In rejoinder, the appellant addressed the argument raised by the respondent's counsel that the claim that the said T.shs. 42,000,000/- was for paying labourers was not canvassed in the trial court. He contended that he learned counsel has misdirected himself on the issue. He further referred this Court to page 17 of the typed trial court proceedings whereby on cross examination he said that he used the T.shs. 42,000,000/- for paying labourers and for transport.

Further he reiterated his argument that there are points of law necessitating determination by the Court of Appeal as stated under paragraph 5(i) and (ii) of his affidavit.

I have given the arguments by both parties due consideration. First of all I agree with the applicant that for leave to appeal to the Court of Appeal to be granted, where the matter emanates from the District of RMs court, the applicant need not show the existence of a point of law. The requirement as provided under section 5 (1) under which this application is made does not provide for point of law to be proved. This position was also underscored in the case of **Faustina Kanyasa v. Neva Kanyasa and Another** (supra) cited by the applicant as well as in **Harban Haji Mosi & Another v. Hilal Seif & Another** (supra) cited by the respondent. However, as decided by the Court of Appeal in **Harban Haji Mosi** (supra) the applicant has a duty to show that there are serious issues, that is, disturbing features, on the impugned decision or proceedings of the case,



which necessitate intervention by an appellate court. See also: **Pili Mwakalonge v. Suzana Shayo**, Misc. Land Application No. 105 of 2019 (HC at Mbeya, unreported) where I also had a chance to explore on the same issue. **Wambele Mtumwa Shamte v. Asha Juma**, Civil Application No. 45 of 1999 (unreported) and **Simon Kabaka Daniel v. Mwita Marwa Nyang'anyi & 11 Others** [1989] TLR 64.

In the application at hand, the applicant has argued that the main contention lies on the interpretation of the terms of the contract between the parties. The said term is on whether the respondent could opt not to pay the remaining part of the agreed sum in the contract. He as well challenged the interpretation made by this Court on what he stated during cross examination that he was paid T.shs 42,000,000/-. This Court took the statement "*I used the said T.shs. 42,000,000/- for paying labourers and for transport*" as an admission on being paid a loan to such amount. The applicant challenges this finding on the ground that the amount paid was for another purpose not stated in the contract between the parties. Mr. Peter challenged this assertion by the applicant arguing that there is clear evidence on record that the applicant admitted to the said fact and this Court made the right decision.

In my view however, what is argued by the applicant revolves around interpretation of the contract between the parties which is the subject matter of the case from the trial court. Having observed as such, I cannot entertain the arguments advanced by Mr. Peter in opposing the application because the same requires scrutinizing the evidence on record and deciding on whether this Court was right in its decision or not.



The moment I engage in that exercise, I shall be stepping in the shoes of the appellate Court something which is not within my mandate.

Given the circumstances, it is therefore fair and just to allow the matter be tested on appeal in the Court of Appeal. The application for leave to appeal to the Court of Appeal is therefore granted. Each party shall bear his own costs.

Dated at Mbeya on this 02<sup>nd</sup> day of July 2020.

  
**L. M. MONGELLA**

**JUDGE**

**Court:** Ruling delivered in Mbeya in Chambers on this 02<sup>nd</sup> day of July 2020 in the presence of both parties.



  
**L. M. MONGELLA**

**JUDGE**