

**IN THE HIGH COURT OF TANZANIA**

**AT TABORA**

**APPELLATE JURISDICTION**

**MSC. CRIMINAL APPLICATION No. 58 OF 2019**

(Original criminal Appeal No. 16 of 201 of the District Court  
of Kibondo, at Kibondo)

**NICHOLAUS K. SALIMBA ----- APPLICANT**

**VERSUS**

**1. SIKUDHANI MAHOBE  
2. FILBERT MUSUZI  
3. PAULO KAYALA  
4. THERESIA SABUNI**

**----- RESPONDENT**

**RULING**

06/12/2019 & 28/02/2020

**BONGOLE J.**

The applicant **NICHOLAUS K. SALIMBA** lodged this application under section 6 (7) (b) of the Appellate jurisdiction Act [Cap. 141 R.E 2002] and Rule 44 of Tanzania Court of Appeal Rules, 2009) seeking for the orders that:-

- 1. That the honorable High Court of Tanzania may be pleased to certify to the court of appeal of Tanzania that there are points of law involved in the decision in PC Criminal Appeal No. 9/2017 worth consideration by the court**
- 2. Any other order(s) deemed fit and just by the honorable High Court.**

This application is supported by an affidavit of the learned counsel Mr. Masendeka Anania Ndayanse an advocate for the applicant, he stated that:-

1. That the applicant was dissatisfied and aggrieved by the judgment and orders delivered by the 2<sup>nd</sup> appellate High Court in PC Criminal Appeal No. 9/2017 between the parties hereto the applicant through his service filed a notice of his intention to appeal on the 13<sup>th</sup> day of May, 2019 hence the instant affidavit supporting the chamber summons.
2. That points of law worth certification to the Honourable Court of Appeal of Tanzania involved in the judgment and orders in PC Criminal Appeal No. 9/2017, includes the following among others:-
  - (i) Whether the 2<sup>nd</sup> appellate High Court of Tanzania was justified in relying upon the provisions of section 345(1) of the Criminal Procedure Act [Cap 20 R.E 2002] when ordering payment of costs by the applicant to the respondents.
  - (ii) Whether section 5(1) (b) of the Primary Court Criminal Procedure Code was correctly interpreted by the 2<sup>nd</sup> appellate High Court when ordering payment of costs by the applicant to the respondents hereto.
  - (iii) Whether the 2<sup>nd</sup> appellate High Court correctly interpreted admission and confession.

When the application came for hearing the parties agreed to dispose the application by way of written submissions.

In his written submission Mr. Ndayanse reiterated the facts stated in his affidavit but he added one more issue which he thinks it needs court attention and certification to the court of appeal for determination, that is

- (i) Whether the 2<sup>nd</sup> appellate High Court correctly dismissed the appeal which was before it.

The respondents jointly replied that, the averment adduced by the applicant has no any legal merit for this court to certify that there is point of law. They said the applicant's application is baseless and is only couched in delaying techniques.

I have gone through the impugned decision of High Court and written submission of the parties and have formed an opinion that this application should be granted.

I find this matter to have serious legal issues which in my opinion attracts for its determination by the Court of Appeal. Apart from the grounds raised by the applicant which I find to have substance for leave to be granted, I am of a further view that there is a need for the Court of Appeal to determine;-

- (i) Whether the 2<sup>nd</sup> appellate High Court of Tanzania was justified in relying upon the provisions of section 345(1) of the Criminal Procedure Act [Cap 20 R.E 2002] when ordering payment of costs by the applicant to the respondents.
- (ii) Whether section 5(1) (b) of the Primary Court Criminal Procedure Code was correctly interpreted by the 2<sup>nd</sup> appellate High Court when ordering payment of costs by the applicant to the respondents hereto.
- (iii) Whether the 2<sup>nd</sup> appellate High Court correctly interpreted admission and confession.

With the above issue in mind, I find that this application befits a grant of leave for the matter to be table before the Court of Appeal for its necessary

orders for the interests of justice. Leave to appeal to the Court of Appeal is therefore granted.

It is so ordered.



**S.B. BONGOLE**

**JUDGE**

**28/02/2020**

Ruling delivered under my hand and seal of the court in chambers, this 28/02/2020 in the presence of the parties.



**S.B. BONGOLE**

**JUDGE**

**28/02/2020**