

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**CIVIL APPLICATION NO. 4 OF 2020**

(Originating from Consolidated Civil Appeal No. 10 & 11 of 2017  
High Court of Tanzania at Moshi)

**DR. JOHN HAULE & MAGRETH MBANZA ..... APPLICANTS**

**Versus**

**WAZALENDO SACCOSS LTD ..... RESPONDENT**

**RULING**

**MUTUNGI .J.**

The applicants are seeking leave to appeal to the Court of Appeal of Tanzania (CAT) against the Judgment and order of this Court in Moshi registry (F. A. Twaib, J.) in **Consolidated Appeal No. 4 of 2019** dated, 14<sup>th</sup> November, 2019.

The application is supported by a sworn affidavit deposed by Mr. John Sindato, the applicants' advocate and is brought pursuant to **section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141, R.E. 2002 (AJA)**. The respondent filed a counter affidavit to object the application, but never

appeared in court hence the matter proceeded Ex-parte.

The brief history that led to the application at hand is to the effect that, the Registrar of Co-operative Societies issued Certificates of Surcharge under **section 95 (3) (b) of the Co-operative Societies Act, No. 06 of 2013** and **Rule 85 of the Co-Operative Societies Regulations, 2015** requiring the then respondents Dr. John Haule and Magreth Mbaza to pay the respondents herein (the then appellant) Wazalendo Saccos Ltd an amount to a tune of Tshs. 720,112,535/= and 303,707,829/= respectively. The then appellant lodged their application at the Resident Magistrates Court praying that the said Certificate of Surcharge be endorsed as a decree of the court which it did and the decree was ready for execution.

However, the trial magistrate struck out the application on the ground that it has no jurisdiction and vacated its order for the endorsement of the decree. Aggrieved by the decision, the respondent herein appealed to this court in two separate appeals which were consolidated as **Civil Appeal No. 10 & 11 of 2017**. This Court decided that the trial Court was right in holding that it has no jurisdiction to entertain the validity of

the surcharge and the amounts in issue but it erred in vacating its own order of endorsement. Further, this Court maintained that after the trial court endorsed the said surcharge, the endorsement orders became the decree of the court thus they could not be vacated by the same court unless by review, revision or appeal. It therefore restored the endorsement order that was initially granted by the trial court. Aggrieved by that decision, the applicants have filed the current application so that, they can further pursue their rights to the highest Court of the land.

In their 13 paragraphs' affidavit, particularly the 13<sup>th</sup> paragraph, the applicants pointed out the grounds of appeal which they believe are worth the consideration of the Court of Appeal as follows: -

- i. That, the trial High Court Judge erred both in law and fact to decide that the Resident Magistrate Court had jurisdiction to vacate its own orders.
- ii. That, the Honourable High Court Judge erred both in law and fact to validate and restore the endorsement of order(s) made by the trial Resident Magistrate Court

on 24<sup>th</sup> February 2017 in both Miscellaneous Application No. 9 and 11 of 2017.

- iii. That, the Honourable High Court Judge erred both in law and fact as the appellate Judge's validation and restoration of the endorsement of order(s) made by the trial Resident Magistrate Court on 24<sup>th</sup> February 2017 in both Miscellaneous Application No. 9 and 11 of 2017 tantamount to condemning the appellants unheard.
- iv. That, the trial High Court Judge misdirected himself on the issue of jurisdiction of the Resident Magistrate Court since the trial Resident Magistrate Court did confine itself to prayers **(d)** and **(e)** by vacating the endorsement of decrees consequently struck out prayers **(a)** **(b)** and **(c)** as lodged by the appellants before the trial Magistrate court.
- v. That, the Honourable High Court Judge erred in law and fact in holding that the only remedies available to challenge decrees allegedly obtained fraudulently by the respondent herein from the trial Resident Magistrate Court at both Miscellaneous Application No. 9 and 11 of 2017 were by review, appeal or revision.
- vi. That, the Honourable High Court Judge erred both law

and fact in holding that, the trial Resident Magistrate Court went into detail in validation of amount(s) payable under decree(s) and surcharge at issue.

The applicants were presented by Mr. Alfred Sindato, learned counsel and when the matter was scheduled for hearing the court ordered the same be done by way of written submission. Mr. Sindato submitted that, it is a cardinal rule that, leave to appeal to the Court of Appeal may be granted only where it is established that there are contentious legal points worth the Court of Appeal's intervention. He added that such position was observed in the cases of **Coca Cola Kwanza Ltd vs. Charles Mpunga & Others, Civil Application No, 393/01 of 2017, CAT at DSM (Unreported), Rajabu Kidimwa Ng'eni & Another vs. Iddi Adam [1991] TLR 38** and **Samson Kishosha Baqra vs. Charles Kigongo Gabba [1990] TLR 133.**

Mr. Sindato further averred that, the applicants have met all the requirements to enable them to appeal to the Court of Appeal i.e. they have already lodged a Notice of Appeal timely as well as written a letter to the registrar requesting for all necessary documents required for appeal purposes.



Further that, the applicants' corresponding affidavit has clearly established the contentious and arguable issues worth the Court of Appeal's intervention.

From thereon Mr. Sindato submitted in respect of each arguable issue as if this court is sitting to determine the intended appeal. He finally prayed that the application be granted as they have demonstrated sufficient grounds as was held in the case of **British Broadcasting Corporation vs. Eric Sikuja Ng'maryo, Civil Application No.138 of 2004, CAT at DSM.**

After considering parties affidavits and applicants' submissions, the pertinent issue for determination before this court is whether the applicant has singled out the points of law worth to be considered by the Court of Appeal. In determining so, the role of the Court is not to stand in the shoes of the Appellate Court, but only to consider whether or not arguable issues have been raised in the proposed grounds of appeal. In the case of **British Broadcasting Corporation V Eric Sikuja Ng'maryo (supra)** it was held that;

*"As a matter of general principle, leave to appeal will be granted where the grounds*

*of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal. However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."*

Also the case of **Saidi Ramadhani Mnyanga V Abdallah Salehe [1996] TLR 74** maintained that, for leave to appeal be granted, the application must demonstrate that there are serious and contentious issues of law or fact fit for consideration by the Court of Appeal.

In the present application, the applicants wasted their efforts arguing on the points of law to be determined by the Court of Appeal as if this court was called upon to determine the intended appeal. The court has no reason to canvass on the merits and demerits of the intended appeal but consider whether there are points of law and the applicants' reasonable chances of success, or rather if the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal.

From the brief history of the dispute between the parties, I am

of the considered view that, this application deserves the Court of Appeal's intervention. Additionally, I have as well considered, that the applicants have justification to exercise their right to appeal specified under **Article 13 (6) (a) in the Constitution of the United Republic of Tanzania, 1977** as amended from time to time. An opportunity to be heard by the Court of Appeal, is the only way the applicants can exercise the claimed right stipulated in the referred Article of the Constitution.

In light of the foregoing and for the interest of justice, I hereby grant the applicants leave to appeal to the Court of Appeal as sought in this application. It is so ordered.



  
**B. R. MUTUNGI**  
**JUDGE**  
**27/08/2020**

Read this day of 27/8/2020 in presence of both Applicants and Mr. Alfred Sindato Learned Advocate.

  
**B. R. MUTUNGI**  
**JUDGE**  
**27/8/2020**



RIGHT OF APPEAL EXPLAINED.

**B. R. MUTUNGI**  
**JUDGE**  
**27/8/2020**