

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

**AT SHINYANGA**

**MISC. CIVIL APPLICATION 14 OF 2020**

*(Arising from the judgment and decree of the High Court of Tanzania at Shinyanga Honourable  
Madam Justice E.Y. Mkwizu dated 5<sup>th</sup> June, 2020 in DC Civil Appeal No. 18 of 2020)*

**ROBERT PETER BAYONA.....APPLICANT**

**VERSUS**

**WILLIAMSON DIAMONDS LIMITED..... RESPONDENT**

**RULING**

*Date of the last Order: 23<sup>rd</sup> September, 2020*

*Date of the Judgment: 9<sup>th</sup> October, 2020*

**MKWIZU, J.:**

The applicant has moved this court through a chamber summons filed under Rule 5(1) (c ) of the Appellate Jurisdiction Act ( Cap 141 R.E 2019) and Rule 45 (a) of the Tanzania Court of Appeal Rules, GN No. 368 as amended by GN No. 362 of 2017 for leave to appeal to the Court of Appeal against the decision of this court in DC Civil appeal. 18 of 2018. The application is supported by the applicant's own affidavit.

At the hearing of the application, Mr. Audax Constantine learned advocate, represented the applicant whereas the respondent had the services of Mr. Kyariga Kyariga advocate who filed a counter affidavit opposing the application.

The gist of the applicant's application as contained in the affidavit filed in support of the application is that: He is aggrieved by the decision of this court dated 5<sup>th</sup> June, 2020 in DC Civil Appeal No. 18 of 2018. And that he filed a notice of appeal in accordance with the Court of Appeal Rules on 12/6/2020. Applicant averred further that; it is mandatory for an aggrieved party to first seek leave to appeal to the court of appeal hence this application.

At the hearing, the applicant's counsel outrightly cited the decision in the case of **Hamis Mdida and Another Vs. Registered Trustees of Islamic foundation, Civil Appeal No. 232/2018** (unreported) where the Court of Appeal insisted that in an application for leave the court is required to only look on the face of the grounds and see whether there are issues meriting interference/determination by the Court of Appeal. Explaining the intended

grounds of appeal as enumerated under paragraph 4 of the affidavit in support of the application, Mr. Audax said on the **1<sup>st</sup> ground**, they want to show the Court of Appeal that applicant did not sue to enforce any contract between the respondent and Mansoor Taslima. He said, Applicant was suing for restitution of his money deposited in the Respondent's account after he was misled by Mansoor Taslima T/a Seif General Supplies.

In the 2nd ground of appeal which was presented in the alternative to ground one. The applicant's counsel said, they will move the Court of Appeal on the grounds that, having found that there was no contract between the applicant and Respondent, the court ought to have ordered the Respondent to refund applicant his money.

On the 3<sup>rd</sup> ground, Mr. Audax said this court erred for holding that applicants suit at the trial court was based on the contract reading the exhibit D1 and on the 4<sup>th</sup> ground, they are faulting this court for holding that the 20 Million were deposited on behalf of Mansoor Taslima. He dropped ground no 5 and requested the court to allow the application.



In response to the application, Mr. Kyariga first adopted the content of the counter affidavit filed on 27/7/2020. He went on submitting that the purpose of leave application is to narrow down possible points worth consideration by the Court of Appeal.

While agreeing on the principle enunciated in the case cited **Hamis Mdida** cited by the applicant's counsel, Mr. Kyariga was of a different view that the issues in **Hamis Mdida (Supra)** were points of law while in our case issues are of factual in nature.

Coming to the intended grounds of appeal, Mr. Kyariga combined ground 1, 2 and 3 together. He said, these grounds raise new matter which were not raised at the trial or the 1<sup>st</sup> appellate Court. He gave examples of the complaint over the enforcement of the contract and claim for restitution of the applicant money deposited from Respondent's account after obtaining wrong information from Mansoor Taslima as well as the complaint that the contract had expired at the time of institution of the suit. Mr. Kyariga was of the view that these are new issues which were not part of the court proceedings. He again questioned the legality of the 4<sup>th</sup> ground where

Applicant complains that the money deposited were not deposited on behalf of Mansoor Taslima. Mr. Kyariga argued that paragraph 4, 6 and 7 of the Plaintiff said clearly that applicant deposited money on behalf of Mansoor Taslima and therefore there is nothing to fault this court.

Mr. Kyariga finally stated that the application has failed to show points worth consideration by the Court of Appeal and therefore should not be allowed.

I have carefully read the averments in the affidavit in support of the application and at the same time gone through the counter affidavit filed by the respondent. In examining the merits of the application of this nature, the Court of Appeal has in various cases insisted that in order for the applicant to be granted leave to appeal to the Court of Appeal, there must be points of law worth consideration by the Court of Appeal. See for instance the case of **British Broad casting Corporation vs Erick Sikujua Ng'imaryo**, Civil Application No.138 of 2004 (unreported) where the court stated inter alia that where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted. In another case titled

Rutagatina **C.L.VS The Advocates Committee and Clavery Mtindo**

**Ngalapa**, Civil Application No.98 of 2010 the Court of Appeal stated that:

*"An application for leave is usually granted when there is a good reason, normally on point of law or on point of public importance that calls for the Court of Appeal intervention".*

In addition, in evaluating the application of this nature, this court is limited to looking at the proposed grounds of appeal against the decision sought to be appealed against. This was so stated in the cited case of **Hamisi Mdida and Said Mbogo** (Supra).

I had time to go through the judgement dated 5<sup>th</sup> June, 2020 and the proposed points in paragraph 4 of the applicant's affidavit. I have also considered the submissions by the parties' counsels. What they were trying to do at the hearing of this application, was to argue the intended appeal in disguise. As stated above, my duties are limited to seeing whether the proposed grounds are worthy consideration by the court of appeal. Guided

by the cited cases above, I am satisfied that applicant has established that there are points worth consideration by the Court of Appeal. I therefore grant leave to appeal to the Court of Appeal as sought.

I make no order as to costs.

**DATED** at **SHINYANGA**, this 9<sup>th</sup> day of **October**, 2020



*E.Y. Mkwizu*  
**E.Y. MKWIZU**  
**JUDGE**  
**9/10/2020**