

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 154 OF 2019

(arising from the decision of this court in civil revision no. 22 of 2017)

TARGET BOREWELLS LIMITED.....APPLICANT
VERSUS
SHABANI A. COSLA.....RESPONDENT

RULING

15th October and 19th November 2020

MASABO, J

The Application is for leave to file an appeal to the Court of Appeal against the decision of this court in Civil Revision No. 22 of 2017. The Application is by way of a Chamber summons made under section 5(1)(c) of the Appellate Jurisdiction Act [Cap 141 RE 2002]. Supporting the application is an affidavit sworn by one Michael Yudas Mwambeta who is identified as the Advocate for the Applicant herein.

The genesis of this Application is that the Applicant successfully sued the Respondent Shabani A. Cosla and 2 Others in Misc. Civil Application No 186 of 2016 before the Court of the Resident Magistrates for Dar es Salaam at Kisutu praying among others, an order lifting an attachment warrant in respect of a Vehicle with registration No. T 975 BQM. The Respondent was disgruntled. He successfully filed a Civil Revision No. 22 of 2017 in this court.

The applicant is dissatisfied. He now intends to appeal to the Court of Appeal hence this application.

In his affidavit, Mr. Mwambeta has deponed that there are three serious points of law to be determined by the Court of Appeal of Tanzania. **First**, whether the court was correct in exercising revisional powers to grant the application without revisiting the issue of ownership of the motor vehicle which was wrongly attached in execution proceedings. **Second**, whether the court erred in revising orders which were not included in applicant's prayers granted Misc. Civil application No. 186 of 2016 from which Civil Revision No. 22 of 2017 emanated. **Lastly**, whether the court was correct in granting the respondent's prayer for decretal amount of TZs 200,000,000/ which was not prayed for in Misc. Civil Application No. 186 of 2016.

When the matter was called for hearing which proceeded in writing Mr. Samson Ombuya, learned counsel Advocate appeared for the Applicant whereas the Respondent appeared in person.

In his submission Mr. Ombuya adopted the content of the affidavit filed in support of the application. He then highlighted that the three issues above are pertinent issues to be determined by the Court of Appeal. Therefore, it is in the interest of justice that his application be granted. He submitted further that the Applicant has shown intention to appeal and has already filed a notice of appeal. Mr. Ombuya proceeded to submit that the applicant stands to suffer an irreparable loss if this application is not granted because

the vehicle in dispute has not been handled over to the applicant since it was wrongly attached in execution of Civil Case No. 99 of 2012 which was the subject of Revision Case No.22 and 765 of 2017.

On his part, the respondent submitted that the applicant has failed to demonstrate how the three points above mentioned are constitute arguable grounds or *prima facie* case. He submitted further that the issue of ownership ought to be challenged in the intended appeal was raised in this court hence it cannot be entertained. He submitted further that the application was heard *ex parte* after the respondent's application was expunged from the record for being defective. Hence, there was nothing raised to sustain the first ground in the intended appeal. Therefore, it should fail.

Regarding the 2 and 3 grounds of the intended appeal, the respondent submitted that they cannot stand because, by the time the Applicant was filing Misc. Application No. 186 of 2016 the disputed vehicle was already sold out and the proceed of Tshs 200,000,000/= had already passed to the decree holder. Therefore, there was nothing wrong for the court to order the decree holder to be given his fruits so that to enjoy his decree. Mr. Ombuya filed a rejoinder in which he submitted that the three grounds above are to be determined by the Court of Appeal after both parties have submitted on such issues. They can not be determined at this stage. This marked the end of the submission by the parties.

With the above points in mind, let me state that, the leave to appeal to the Court of Appeal is a discretionary order granted by this court upon the

Applicant establishing that the appeal stands reasonable chances of success or that the proceedings as a whole reveal such disturbing features as to require guidance of the Court of Appeal. Leave may also be granted if the applicant ably demonstrates to the satisfaction of the court that there is an arguable or *prima facie* case warranting determination by the Court of Appeal. This principle was emphatically stated in the following terms by the Court of Appeal in **British Broadcasting v Eric Sikujua Ng'ymaro**, Civil Application No. 133 of 2004, (unreported):

“Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must, however judiciously exercised and on the materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeals raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal [emphasis added]

In the light of this principle, there is only one issue deserving determination of this court, that is, whether the grounds fronted by the applicant reveal issues of general importance or a novel point of law or whether they show a *prima facie* or arguable case.

Upon examination of the three grounds of the intended appeal as fronted by the applicant in paragraph 7 of the affidavit, I am of the view that the application satisfies the requirement of the law. Through the three grounds listed above, the applicant has ably demonstrated that there is an arguable case between the parties deserving the determination of the Court of Appeal.

Whether in the end these grounds will emerge successful, is not a matter for this court to determine. As correctly argued by Mr. Ombuya, the merit of these issues is a reserve of the Court of Appeal. They cannot be determined at this stage as doing so would be tantamount to usurping the powers of the Court of Appeal. At this stage the parties are only required to demonstrate the existence of an arguable/prima facie case.

Accordingly, I allow the application with costs.

DATED at DAR ES SALAAM this 19th day of November 2020.



A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

J.L. MASABO

JUDGE