

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 119 OF 2019

(C/F Consolidated Civil Appeal No. 18 of 2018 & 22 of 2018, Civil Case No 64 of 2016,
Resident Magistrates Court at Arusha)

THE SCHOOL OF ST. JUDE LTD.....APPLICANT

VERSUS

RAMADHANI ISSA SHEMNGA.....RESPONDENT

RULING

07/10/2020 & 23/10/2020

MZUNA, J:

Before this court is an application for leave to appeal to the Court of Appeal against the decision of this court (**Hon. Mwenempazi, J**) in Consolidated Civil Appeal No. 18 of 2018 & No. 22 of 2018 which was delivered on 31st October 2019. The application is supported by the sworn affidavit of the applicant's counsel Miss. Rehema Kitaly.

A memorandum of appeal is also attached to the applicant's application and for the purposes of this application, I find it ideal to reproduce it:-

- i. That, the Honourable Appellate Judge erred both in law and fact by failure to hold that it was not legally proper for the trial Magistrate to admit the documentary***

evidence produced in court during the hearing contrary to Order XIII Rule 4 (1) of the Civil Procedure Code [Cap 33 R.E 2002]

ii. That, the Honourable Appellate Judge erred both in law and in fact by failure to hold that the trial Magistrate was wrong in basing his decision on good performance instead of the legality of the employment contract.

Primarily, this application has not been objected by the respondent and therefore hearing proceeded ex parte. Supporting her application Miss Rehema, the learned counsel basically reiterated what is stated in her sworn affidavit together with the proposed memorandum of appeal (above reproduced). She further added that for the court to grant an application for leave two conditions must be taken into consideration: - **One**, the application must involve substantial point of law which needs the consideration of the Court of Appeal. **Second**, there must be an issue of general importance or noble point of law or prima facie case necessitating the intervention of the Court of Appeal. The learned counsel in support of this argument cited two cases; **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004, CAT at DSM and that of **Tanzacoal East Africa Limited vs. The Minister for Energy & Minerals**, Misc.

Commercial Application No. 331 of 2015, High Court Commercial Division at Dar es Salaam (unreported).

I have dispassionately considered the applicant's application, her oral submission together with the cited cases. I am of the considered view that it is indeed the requirement of the law as cited by the applicant in the chamber summons that no appeal shall lie to the Court of Appeal unless with the leave by the High Court. The High Court is vested with the discretionary powers in granting applications for leave, however the grant is not automatic, as correctly submitted by the applicant's counsel that in determining whether to grant the application or not certain criteria must be taken into consideration.

In the case of **British Broadcasting Corporation** (supra) the Court of Appeal stated that;

*"As a matter of general principle, leave to appeal will be granted where the grounds of appeal **raise a general importance or a novel point of law or where the grounds show a prima facie or arguable appeal.**"*

(Emphasis mine).

After my close reading of the proposed memorandum of appeal and the filed affidavit and submissions, I am convinced that indeed, there are noble points of law involved worth consideration by the Court of Appeal. Such points which I hereby certify are:-

- 1. Whether the documentary evidence were legally and properly admitted according law?***
- 2. Whether the impugned judgment considered legality of the employment contract?***

The above points along with the fact that the respondent has not objected this application, have moved this court to grant this application.

Leave is accordingly granted under Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E 2002, with no order for costs.

It is hereby so ordered.



A handwritten signature in black ink, appearing to read "M. Mzuna".

**M. MZUNA,
JUDGE.
23/10/2020**