

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

PC MISCELLANEOUS APPLICATION NO 37 OF 2020

BETWEEN

IBRAHIM RAJAB _____ **APPLICANT**

VERSUS

LUCAS OBONYO MWANDE _____ **RESPONDENT**

(Arising from the decision and orders of the High Court of Tanzania at Musoma Galeba J. in PC Civil Appeal no 2 of 2020 dated 12.06.2020)

RULING

11th November & 11th December 2020

GALEBA, J.

This is an application for an order of this court certifying that there is a point of law meriting attention of the Court of Appeal following the judgment of this court dismissing the applicant's appeal on 12.06.2020.

The dispute between the parties was based on breach of contract which had been entered into by the parties on 30.09.2008. In that agreement, **Ibrahim Rajab** hired a boat engine from **Lucas Obonyo Mwande**, and **Ibrahim** would pay **Lucas** Tshs 100,000/= at the end of each month effective 30.09.2008.

For reasons that are not relevant to this ruling, **Ibrahim** did not pay the money as agreed. Because of the huge accumulated debt, in the year 2018, **Lucas** filed civil case no 72 of 2018 in the primary court at Shirati in Rorya in order to enforce the payment. Although the debt had accumulated to Tshs 12,000,000/= but the primary court awarded Tshs 9,400,000/= in favor of **Lucas**. **Ibrahim** was aggrieved by that decision and he filed civil appeal no 23 of 2018 in the district court at Tarime, but the appeal was struck out on 17.07.2019 for reasons that the same had been filed out of time. When that happened, **Ibrahim** filed miscellaneous civil application no 20 of 2019 in the same district court, this time, seeking enlargement of time within which to file the appeal against the decision of the primary court.

Once again, the district court dismissed that application on 28.11.2019 as **Ibrahim** did not demonstrate sufficient cause to explain the delay. Being still aggrieved **Ibrahim**, filed PC civil appeal no 2 of 2020 which I dismissed on 12.06.2020. This application is seeking for a certificate to certify that this court's judgment of that date has points of law worthy attention of the Court of Appeal.

The applicant raised four points to be certified by this court, but in his submissions, as the application was heard by way of written submissions, he abandoned two of the grounds and retained only two points at paragraphs 14(b) and 14(c) of the affidavit which are; **one** whether the high court was right to hold that a point of law cannot be raised on appeal and **two** whether the high court judge considered that an illegality on a point of law was sufficient ground for the court to extend time to appeal.

In respect of the 1st point the applicant argued that as the contract had been entered into in 2008 and the main suit was instituted in 2018 the high court was wrong not to hear that point of law although the same was not raised in the district court.

The high court in that ground, had taken the view that a matter not decided in a lower court cannot be heard on appeal relying on **Hassan Bundala Swaga v Republic**, Criminal Appeal no 416 of 2014; (CAT unreported). However, the applicant cited the case of **Fanuel Mantiril Ng'unda v Herman Mantiril Ng'unda**, Civil Appeal no 8 of 1995; (CAT unreported) in which it was held that a point of jurisdiction must be decided even when the same was not raised in the lower court. Because of

these two positions, I am in agreement with the applicant that there is a point of law that is meriting scrutiny of the Court of Appeal.

I have perused the submissions of the applicant but this court has not managed to find the submissions in support of the second point (the point contained at paragraph 14(c) of the affidavit). That point would be considered but the same is not clear as to its meaning and it is confusing.

In the circumstances, the following point is hereby certified.

'whether an appellate court can entertain an issue of time bar while the same was not raised or argued in the trial court or the 1st appellate court.'

The point contained at paragraph 14(c) of the affidavit is refused.

DATED at MUSOMA Tanzania this 11th December 2020



Z. N. Galeba
JUDGE
11.12.2020