

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

MISC. CIVIL APPLICATION NO. 34 OF 2019

(Arising from the Decision of the High Court of Tanzania at Tanga
in Civil Appeal No. 1 o 2018)

SAMSON REBULE MAIRAAPPLICANT

VERSUS

NEEMA KULWA MVANGARESPONDENT

RULING:

MKASIMONGWA, J

Samson Rebule Maira (Applicants) is dissatisfied with the decision of this Court in Civil Appeal No. 1 of 2018 dated 09/08/2019 which was in favour of Neema Kulwa Mvanga (Respondent). He therefore brought this Application seeking for grant of leave for him to appeal to the Court of Appeal of Tanzania against the decision. The Application is made by way of Chamber Summons supported by affidavit of the Applicant and it is filed under Section 5 (1) (c) of the Appellate Jurisdiction Act [Cap. 141 R. E. 2002 and any other enabling provisions of the law.

Although the Respondent was served she could neither file a Counter Affidavit nor appear before the Court and upon having been satisfied that she was properly served the Court ordered for ex-parte hearing.

On the date the case came for hearing Mr. Mzulle (Adv) appeared on behalf of the Applicant. When he was invited by the Court to argue his

case Mr. Mzulle (Adv), in the first place, adopted all the contents of the Affidavit filed in support of the Application when making submission. He stated that the provision of the law under which this Applicant is brought is silent as to the conditions for grant of leave to appeal to the Court of Appeal of Tanzania. The case law however, provides for assistance in this regard. He referred the Court to the decision in the case of **Sango Bay Estates Limited and Another v. Dresdere** (1971) EA 16 when the Court stated as follows:

"While considering the application for leave to appeal the same shall be granted where it is shown that there are grounds of appeal that merit judicial consideration by the highest Court of the land".

That holding by the Court was quoted with approval by the Court in the case of **Elizabeth Jerome Mmasi and Six Others**: Misc. Civil Application No. 34 of 2018, HCT at Tanga (unreported). Mr. Mzulle contended that, under paragraph 5 of the supporting affidavit the deponent averred showing six grounds upon which the intended appeal shall be founded. He submitted that the grounds merit consideration by the Court of Appeal of Tanzania in the appeal. The learned counsel prayed the Court, that it finds as such and consequently grant the order sought by the Applicant so that he appeals to the Court of Appeal against the aforementioned decision of this Court.

I have considered the submissions. The Applicant applies for leave items of Section 5 (1) (c) of the Appellant Jurisdiction Act [Cap 141 R. E. 2002] which reads as follows:-

"5 (1) In Civil proceedings, except where any other written law for the time being in force provides otherwise an appeal shall lie to the Court of Appeal.

(a) . . .

(b) . . .

(c) With leave of the High Court or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court."

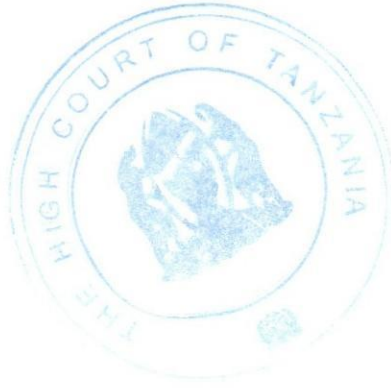
I subscribe to what is stated by the learned counsel for the Applicant that the provision of the law above is silent as to what are the conditions for grant of leave to Appeal to the Court of Appeal by the High Court or even the Court of Appeal. Going by the decision in the case of **Sango Bay Estates Limited and Others v. Dresdner Bank** (1972) EA 17, when confronted by a question whether or not to grant leave to appeal to the Court of Appeal, the Court shall consider whether it is exhibited that there are grounds of appeal which merit judicial consideration by the Court at the apex within our judicial system. Under paragraph 5 of the Affidavit in support of the Application the Applicant listed six points of law in his attempt to exhibit to the Court that there are grounds of appeal which attract for consideration by the Court of Appeal. The points are that:

1. Whether it was proper for the High Court Judge to grant custody of the child to the respondent after the court had satisfied itself on the respondent's bad behavior.
2. Whether it was proper for the High Court Judge to hold that female Children of tender age (below 18 years) are ordinarily kept under custody of their mother.
3. Whether it was proper for the High Court Judge in the present case for failure to assess the parents' character before granting custody of the child to the Respondent.
4. Whether it was proper for the High Court Judge to remove custody of the child from the Appellant and place it to the respondent without disclosing any fault on part of the appellant.
5. Whether it was proper for the High Court Judge to remove custody of the child who is above seven years from the appellant basing on the reason of gender.
6. Whether it was proper for the High Court Judge to remove custody of the child from the appellant basing on the factor of dangers of step mother-step child relationship without any proof and without considering that there is also step father-step child relationship.

Going by the grounds, I am satisfied that the Applicant has discharged the burden imposed on him that is demonstrating, prima facie, that there are grounds of appeal worth to be considered by the Court of Appeal which suffice grant of leave.

In the event this Application is granted. The Applicant is hereby granted leave to appeal to the Court of Appeal challenging the decision of this Court in Civil Appeal No. 1 of 2018. No order as to costs is made.

Dated at Tanga this 5th day of November, 2020




E. J. Mkasimongwa

JUDGE

05/11/2020