

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION No. 316 OF 2019

(Originating from Civil Appeal No 256 OF 2017)

RESPICIUS ISHENGOMAAPPLICANT

Versus

AIRTEL TANZANIA LIMITED.....RESPONDENT

RULING

13th November, 2019 -27th February, 17th March, 2020

J. A. DE-MELLO J;

Leave to Appeal to Court of Appeal against the decision and, order of this Court dated 15th April, 2019 has been lodged by the Applicant who is in care of Counsel Desideriy Ndibalema. The Application is supported by the Affidavit of the Applicant himself, **Respiciuos Ishengoma** and, challenged by the Counter Affidavit of **James Kabakama**, fended by **Sued Ismail**. It is the correctness of the findings of **Civil Appeal No. 259 of 2017** alleging that the High Court judge erred in law and, in fact for misdirecting itself that, the Resident Magistrate Court had no jurisdiction; further that, the cause of action was based on **consumer** opposed as to **competitions**, furthermore that, according to Rule **79 (1)** of the **Fair Competition Rules, 2010**, the consumers cases are being heard and determined by the ordinary Courts,

therefore Kisumu Resident's Court had the Jurisdiction to determine the matter and, the Appellate Court was thus wrong deciding otherwise in the **Civil Appeal No. 259 of 2017**. The Judge erred in law for failure to interpret the rule governing the fair competition commission on consumer related cases as the **Rule 79 (1) and (3)** of the **Fair Competition Rules of 2010**, provides among other that, the fair Competition Tribunal cannot entertain matters which has no competition. Counsel for the Respondent adopted paragraph 4 of the Counter Affidavit and, submitted that, all points of law were determined by this Court in the **Civil Appeal No. 259 of 2017**, that, the Trial Resident Magistrate Court had no Jurisdiction. That the Trial Judge referred to section **40 (1)** and **47 (1) (i) and (f)** of the **Tanzania Communication Regulatory Authority Act of 2003** oust jurisdiction to normal Courts in matters related to supplier for goods and, services. That, the matter being a complaint of unlawful re allocation of mobile phones to another user, was to be determined by TCRA Tribunal and Not Resident Magistrate Court. Having heard the submissions from both sides, it must be noted that, unless **two** conditions are satisfied, Leave cannot be granted to wit;

(i) The case should involve a substantial question of law worth the consideration of the Court of Appeal; and

(ii) the grounds raised must be of issues of general importance or novel points of law or prima facie case necessitating the intervention of the Court of appeal.

In Buckey vs. Holmes (1926) All ER NQ.90 page 91 held that;

“The rule laid down by the Courts in various decisions is that, an appeal shall lie to the court of appeal from any judgment decree or final order of the High Court, whether in civil or in Criminal or other proceedings, if the High Court during the stage of granting leave is satisfied that the case involves a substantial question of law as to the interpretation of the law. And that the reasons advanced as grounds of appeal raises the question of general importance or novel point of law and of course no issue of fact or evidence.”

Also the Court of Appeal of Tanzania had in the case of **Elisa Mosses Msaki vs. Yesaya Ngatu Matee [1990] TLR at page 90** emphasized the **Issue of Law** to be considered in granting Leave to Appeal to the Court of Appeal. Another is the existence question of general principle or general importance. Conversely, the fact that Leave to Appeal is given, is not of itself as an indication that, the Judgments below, are thought to be wrong. It may well be that Leave is given in order that, the relevant law may be authoritatively restated in clearer terms. There is a necessity of re-instating the interpretation of rule **79 (1)** of the **Fair Competition Commission Rules of 2010** and **section 40 (1) and 47 (2) (f)** the **Tanzania Communication Authority Regulatory Authority Act, 2003** testing the Jurisdiction of normal Courts in some matters related to **Fair Competition** in clear terms as shown in the grounds of the Appeal as stated by the Applicant warranting the intervention of the Court of Appeal.

The grounds advanced by the Applicant, I believe to be sufficient grounds for Appeal and, fit grounds for exercising the Court’s discretion to grant leave to the Applicant to Appeal to the Court of Appeal, the grounds of Novel points

of law, issues of general importance or novel point of law necessitating the interventions of the Court of Appeal.

Based on the above reasoning, the Application is therefore granted. Costs should follow the event in course of Appeal.

It is so ordered.


J. A. DE-MELLO

JUDGE

17/03/2020