

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

**MISC. CIVI APPLICATION NO. 294 OF 2021**

*(Emanating from the Judgement and Decree of the High Court, Dar es Salaam District Registry at Dar es Salaam, in Misc. Civil Appeal No.11 of 2005, dated 17<sup>th</sup> August, 2007 by Hon. Manento, Kalegeya, Mandia, JJJ and from the Ruling of the High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam, in Misc. Civil Application No.228 of 2019, Hon. Kulita, J. dated 10<sup>th</sup> June, 2021)*

**RAMADHANI BAKARI & 95 OTHERS..... ..APPLICANTS**

**VERSUS**

**AGA KHAN HOSPITAL..... .. RESPONDENT**

*Date of last Order: 28/10/2021*

*Date of Ruling: 26/11/2021*

**R U L I N G**

**MGONYA, J.**

Before me is an Application by Chamber Summons brought under the provision of **section 5 (1) (C) of the Appellate Jurisdiction Act 1979 CAP. 141 [R. E. 2009]** and **Rules 45 (a) and 47 of the Tanzania Court of Appeal Rules, 2009.**

The orders sought herein are:

- a) *That, this Honorable Court be pleased to grant for leave to the Applicant to appeal to the Court of Appeal of Tanzania against the decision of the High Court (District Registry at Dra es Salaam by Hon. Manento, Kalegeya, Mandia, JJJ. dated 17/08/2007 in Civil Appeal No. 11 of 2005.*
- b) *For any other order (s) as this Hon. Court may deem fit and just to grant.*

The Chamber Summons is accompanied by the Affidavit of the Applicant **RAMADHANI BAKARI** one of the applicants respectively. The Application was argued by way of written submissions by both parties.

In the submission, the Applicants averred that they have raised serious point of law to warrant the grant of the application. Based on grounds provided under paragraph 21 (i) and (ii) of the affidavit in support of Application.

Further, the Applicants stated in the submission that this is not a new application before the Court. It is through the Applicant's Affidavit that series of events or court processes are shown up to the time of filing the instant Application.

Finally, on **24 /06/2021** as shown in the Court's record, the Applicant filed before this Court the instant application for

leave to appeal to the Court of Appeal, as it has been ruled out by the Court of Appeal that there was a serious point of law to be determined by the Court based on the same grounds stated in the affidavit.

In concluding the submission, it was the Applicants' assertion that as much as they have complied with all initial steps for initiating an appeal processes within the prescribed period of time, it was the Applicants humble request that the prayers sought for in the chamber summons be granted.

The Respondent strongly opposed the application on the grounds that the application before the Court has not established any disturbing feature for leave to be granted nor point of law worthy or public interests worth the consideration of the court of appeal.

The Respondent further challenged that on the Applicants mandate to question the power of Industrial Court to order additional payments. After parties failed to agree on redundancy package that ground was referred as academic, frivolous and not worthy the precious time of the Court of Appeal.

Also the Respondent contested that, as the applicants have submitted that the application established serious point of law that requires determination of the Court of Appeal; that is not

enough to just mention "serious point of law" rather the Applicants are bound to show how serious the purported question of law is. Further that, the Applicants failed to demonstrate a tangible reason on the Court to apply its discretion upon in determining whether there is a serious question of law to be considered by the Court of Appeal or not.

It is the Respondent call that the application be dismissed with costs to the reasons that the Applicants failed to establish that they have arguable case or novel point of law worth determination of the Court of Appeal.

It is a statutory requirement under **Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 [R.E. 2002]** that, 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 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.**

Leave to appeal to the High Court has been well settled by the jurisprudence of this Country that it is general principle that leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a *prima facie* or arguable appeal. This was

established in the case of ***BUCKLE V HOLMES [1926] ALL E.R Rep 90 at page 91.***

However, the seeking of leave at the High Court to appeal to the Court of Appeal is a procedural practice of which also requires the Applicant to have implicated the point of law of which the Applicant intends the Court of Appeal to determine when leave is granted. The same was stated in the case of ***SIMON KIBAKA DANILL VS. MWITA MARWA [1989] TLR 64 AND SAID RAMADHANI MNYANGA VS. ABDALLAH SALEHE (1996) TLR 74***, it was held that:

***"In an Application for leave to Appeal to the Court of Appeal there must be contentious issues of law and it must be a case for further consideration by Court of Appeal."***

Now having gone through paragraphs 21 (i) and (ii) of the Affidavit and the submission of the Applicant, I must admit to find that the Applicants have identified the grounds or point of law that ought to be determined by the Court of Appeal. The Applicants have emphasized that, to appeal is their Constitutional right enshrined in **the Constitution of the United Republic of Tanzania (1977)**.

For the reasons stated herein above this Honorable Court is satisfied that the Applicant has justifiable reason advanced to constitute good cause to warrant this Court to exercise its discretion to grant leave to appeal to the Court of Appeal.

Having said so, the **Application for leave to appeal to the Court of Appeal is accordingly granted**. The Applicants are hereby granted with 30 days time after attaining the copy of this ruling to file their respective Appeal to the Court of Appeal.

I make no order as to costs.

It is so ordered.



  
**L. E. MGONYA**  
**JUDGE**  
**26/11/2021**

**COURT:**

Ruling delivered in chambers before the Applicants and Mr. David Pongolela Advocate for Respondent, and Mr. Richard RMA this 26<sup>th</sup> day of November, 2021.



  
**L. E. MGONYA**  
**JUDGE**  
**26/11/2021**