

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

AT MBEYA

MISC. CIVIL APPLICATION NO. 44 OF 2020.

(From Misc. Civil Application No. 24 of 2019, in the High Court of Tanzania, at Mbeya).

NOTIKER MGINA.....APPLICANT

VERSUS

MURINGA CO. LTD (BARAKA JULIAS).....RESPONDENT

ORDER

17 & 17. 02. 2021.

UTAMWA, J:

This application by the applicant, NOTIKER MGINA is made under section 5(2)(c) of the Appellate Jurisdiction Act, Cap. 141 R.E 2019 and Rule 45 (a) of the Court of Appeal Rules, 2009 (the CAT Rules). According to the chamber summon, the applicant prayed for leave to appeal to the Court of Appeal of Tanzania (CAT). The application is supported by his own affidavit.

The court however, noted that, under paragraph 4 of the affidavit supporting the application, the applicant indicated that, he was seeking for a certificate of point of law to be considered by the CAT. This court thus, prompted the applicant, who appeared in person and without any legal

representation, to show cause as to why the application could not be struck out for incompetence following the contradiction between what was prayed in the chamber summons on one hand, and the prayer under paragraph 4 of the affidavit. In reply, the applicant submitted that, he knows nothing about the application since it was drafted by one Christopher Monzo, who deals with human rights. The said Christopher is nevertheless, not a professional lawyer.

Now, having considered the record, the brief submissions by the applicant and the law, I am of the following settled views; that, since section 5(2)(c) of Cap. 141 cited above is an enabling law regarding an application for a certificate of point of law to be considered by the CAT on appeal, and as long as rule 45(a) of the CAT Rules guides on the procedure in applying for leave to appeal to the CAT, and as long as a leave to appeal and a certificate of point of law are two different creatures in law and governed by different provisions of law, I am convinced that, the application at hand was filed with a serious misconception of law. It is more so considering the obvious contradiction of the prayers made by the applicant as demonstrated earlier.

Now, owing to the trend shown above, it is not clear as to which particular prayer does the applicant intend to make before this court. Is it for leave to appeal to the CAT, or for a certificate of point of law, or for both? Besides, such two prayers cannot be combined in a single application since they are absolutely distinct and they are guided by different provisions of law as hinted previously. The application will thus, obviously

occasion confusions to the applicant himself (as a layman), and the respondent. It will ultimately cause injustice.

In my further view, the complications pointed herein above cannot be saved by amending the application since even the applicant is not aware of what he in fact, intends to pray before this court. Indeed, this is the consequences of using non-professionals (commonly known as *bush-lawyers*) in conducting court proceedings. This court cannot also step into shoes of a professional lawyer and advice on what exactly the applicant needs under the circumstances of his case. Otherwise, the court may get into blameworthiness in case the applicant loses his rights.

It must also be noted that, the problem in the matter at hand is not a mere technical matter of wrong or non-citation. It is indeed, the serious misconception of the law which may result into injustice as shown above.

Now, due to the above highlighted serious complications in the application at hand and its legal consequences, I am convinced that, the same cannot be saved by the principle of overriding objective. This principle essentially requires courts to deal with cases justly, speedily and to have regard to substantive justice; it was also underscored by the CAT in the case of **Yakobo Magoiga Kichere v. Peninah Yusuph, Civil Appeal No. 55 of 2017, CAT at Mwanza** (unreported).

Nonetheless, the principle of overriding objective cannot apply to matters offending important procedural rules to the extent of occasioning injustice like the application under discussion. The principle was not meant to absolve each and every blunder committed by parties in court

proceedings. Had it been so, all rules of procedure would have been rendered nugatory. The principle does not thus, create a shelter for each and every breach of the law on procedure. This is the spirit that was recently underlined by the CAT in the case of **Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others, Civil Appeal No. 66 of 2017, CAT at Arusha** (unreported). In that case, the CAT declined to apply the principle of overriding objective amid a breach of an important rule of procedure.

Owing to the reasons shown above, I see it just to strike out this application for being vague, hence incompetent. I accordingly, strike it out. Each party shall bear his own costs since the respondent does not always appear in court. The applicant is advised that, if he still wishes, he can file a proper application upon knowing what he in fact needs under the circumstances of his case, of course subject to the law of limitation. It is so ordered.



J.H.K. Utamwa

JUDGE

17/02/2021

Court; Order pronounced in the presence of the applicant, in court this 17th February, 2021.

J.H.K. Utamwa

JUDGE

17/02/2021