IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 683 OF 2018

(Arising from Land Case No. 12 of 2017 before Hon. Luvanda J)

INCAR TANZANIA COMPANY LIMITED .....1ST APPLICANT

SHIVA IMAGES TANZANIA LIMITED .....2ND APPLICANT

VERSUS

TANZANIA RAILWAY CORPORATION

(as a successor to Reli Assets Holding

Company Limited (RAHCO).....1ST RESPONDENT

THE COMMISSIONER FOR LANDS .....2ND RESPONDENT

THE REGISTRAR OF TITLES.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL .....4TH RESPONDENT

RULING

Date of Last Order: 13/4/2021
Date of Ruling: 28/4/2021

MASABO J:-

This is an application for leave to file an appeal to the Court of Appeal against the decision of this court in Land Case No.12 of 2017. The application is made by way of a chamber summons filed under section 5(1)(c) of the Appellate Jurisdiction Act [Cap 141 R.E 2019]. It is supported by an affidavit affirmed by Amal Somaiya who is identified as the Principal Officer for the Applicant.

The dawning of this application is that the Applicants sued the respondents in Land Case No 12 of 2017. Upon being served the respondents raised preliminary objections, among others, that, the suit was incompetent for want of 90 days' notice to sue the government per section 6(2) of the Government Proceedings Act, Cap 5 RE 2002. The court upheld the preliminary objection and struck out the suit with costs. Resentful, the applicants now intend to appeal to the Court of Appeal.

According to paragraph 11 of the affidavit, there is only one point of law requiring determination by the court of Appeal of Tanzania, that is, *whether the 1st respondent falls within the ambit of section 6(2) of the Government Proceedings Act Cap 5 RE 2002 as a government department and subject to a 90 days' notice rule*.

Arguing in support of the application Mr. Ishengoma, Counsel for the Applicant, submitted that the applicant seeks leave to appeal to the Court of Appeal for a clear interpretation on whether section 6(2) of the Government Proceedings Act Cap 5 Revised Edition 2002 applies to suits against Public Corporation established by the Act of Parliament. He argued that, when the suit was filed vide Land Case No 12 of 2017, the 1st respondent was known as Reli Assets Holding Company Limited (RAHCO) which was registered as a corporate company limited established by the Railways Act with capacity to sue or be sued in its name. Later, by operation of the law RAHCO was succeeded by Tanzania Railways Corporation established under the Tanzania Railways Corporation Act No. 10 of 2017. Mr. Ishengoma quoted section 4(2) of the Railway Corporation Act and submitted that, the provision states that the corporation shall be

a body corporate with perpetual succession and a common seal and shall, in its own name, be capable of suing and being sued. Further, it states that, in case the Attorney General (AG) prefers to intervene in any matter the provisions of the Government Proceedings Act shall apply in relation to the proceeding of that suit or matter as if it was instituted against the government.

In view of this, he argued that, the intervention of the AG is optional and it is after the AG shows interest. Other than that, the Corporation can sue and be sued without the need of consent by the AG. However, as per the Railways Act, the Corporation has a duty to notify the AG of the pendency of the suit against the corporation and if the AG finds it necessary, he may intervene. Therefore, the notice of 90 days is not mandatory to be issued to the 1st respondent.

He argued further that, the purpose of the 90 days' notice to the Government department opportunity to find the possible means to resolve the dispute without involving the court mechanism and in so doing, save the time and cost of litigation. In Mr. Ishengoma's view, the 3rd respondent was of no help in resolving the dispute between the Appellant and the 1st and 2nd respondent. Therefore, there was no need for notice to the 3rd respondent.

Having narrated the background of the application, Mr. Ishengoma argued that the role of the judge in determining an application for leave to appeal is dissimilar to that of the appellate court. That it is not the role of this court in the instant application to determine whether the decision of the

trial judge was wrong or right but rather to consider whether there are grounds raised which qualify to be determined by the Court. In support, he cited numerous authorities such as **Wambele Mtumwa Chamte vs Asha Juma,** Civil Application No. 45 of 1999 (CAT) (unreported) and **Mzungu vs The IDM Mzumbe**, Civil Application No 94 of 1999(CAT) unreported.

On the respondents' side, Mr. Yohana, learned State Attorney ardently resisted. He prefaced his submission with the case of **Gruup vs Jangwani Sea Breez**, Commercial Case No.93 of 2002 (unreported) where it was held that, the role of the court in similar application is to determine whether there are arguable issues fit the consideration of the Court of Appeal. He proceeded to argue that, in exercising this duty the court has to consider whether the applicant has established a substantial question of law and that the question so established has issues of general importance (**Buckay vs Holmes** (1926) ALLER No. 90 at page 91).

On the merit of the application, he submitted that, the question raised by the applicant in this case is whether section 6(2) of the Government Proceedings Act applies to the 1st Respondent. He reproduced the provision of this section and proceeded to argue that, the provision is no longer in force following the amendment done by section 25 of the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020 which has extended the requirement for notice to all ministries, government departments, executive agencies, parastatal organizations, etc, and which has made the joinder of the AG in all matters against these institutions/organisations/departments mandatory thus the question

above have been rendered redundant. He then cited the decision of the Court of Appeal in **Rutagatina C. L & Another v The Advocates Committee & Another**, Civil Application No. 98 of 2010 (unreported) and submitted that, since the position of the law has changed following the amendment above, the point raised no longer constitute a point of significant importance deserving determination by the Court of Appeal as such determination will merely be an academic exercise which will add no value to the jurisprudence.

I have thoroughly read and considered the submissions fronted by the parties and I am now read to determine the application. The position of law in applications for leave to appeal to the Court of Appeal is as articulated in **Rutagatina C. L & Another v The Advocates Committee & Another** (supra), thus:

> An application for leave is usually granted if there is good reason, normally on a point of law or on a point of public importance, that calls for this Court's intervention. Indeed, on the aspect of leave to appeal the underlying principle was well stated by this Court in **Harban Haji Mosi and Another v Omar Hilal Seif and Another,** Civil Reference No. 19 of 1997 (unreported) thus:-
>
> > *Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the*

spectre of unmeriting matters and to enable it to give adequate attention to cases of true public importance.

The same principle was restated in the subsequent decision of this Court in **British Broadcasting Corporation v Eric Sikujua Ng'maryo,** Civil Application No. 133 of 2004 (unreported) as follows:-

Needless to say, leave to appeal is not automatic. It is within the discretion of the Court to grant or refuse leave. The discretion must, however be judiciously exercised on the materials before the court. As a matter of general principle, 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 (see: ***Buckle v Holmes*** *(1926) ALL E.R. Rep. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted.*

In the present case, as alluded to earlier on, leave is sought to enable the applicant to move the Court of Appeal to determine whether section 6(2) of the Government Proceedings Act applies to parastatals. In view of the above authorities, the question to be determined by this court is whether this point raises an issue of general importance or a novel point of law or whether it constitutes a prima facie or arguable appeal? I will respectfully not allow myself to be detained by this point because, as ably demonstrated by Mr. Yohana, the intended appeal will deal with an issue

which has already been settled by the amendment introduced by section 25 of the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020 which amended section 6 of the Government Proceedings Act. Following this Amendment, section 6(2) of the Government Proceedings Act currently provides as follows:

> (2) No suit against the Government shall be instituted, and heard unless the claimant previously submits to the Government Minister, Department or officer concerned a notice of not less than ninety days of his intention to sue the Government, specifying the basis of his claim against the Government, and he shall send a copy of his claim to the Attorney-General.
>
> (3) All suits against the Government shall, after the expiry of the notice be brought against the Government, and a copy of the plaint shall be served upon the Government ministry, government department, local authority, executive agency, public corporation, parastatal organisation, or public company that is alleged to have committed the civil wrong on which the civil suit is based and the Attorney General shall be joined as a necessary party.

From this provision, it is crystal clear that the requirement of notice has been extended to public corporations and parastatals. Accordingly, whereas in the past this issue would have merited the consideration and

determination of the Court of Appeal, following this amendment it does not as such a determination would merely be an academic exercise.

On this ground, I disallow the application.

DATED at **DAR ES SALAAM** this 28th day of April 2021.

J.L. MASABO

JUDGE