



**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

CIVIL APPLICATION NO. 53 OF 2019

(Arising from Civil Appeal No. 19/2015 of the High Court of Tanzania at Bukoba and Civil Case No. 7 of 2011 of the Resident Magistrate Court of Bukoba)

ROBERT RUGAMBIRWA.....APPLICANT

VERSUS

TANICA LTD.....1ST RESPONDENT

MERCHIORY ERNEST KAREGA.....2ND RESPONDENT

RULING

Date of last order 11/05/2021

Date of ruling 21/05/2021

Kilekamajenga, J.

The applicant lodged this application seeking leave to appeal to the Court of Appeal of Tanzania. The application was made by way of chamber summons supported with an affidavit deposed by the applicant. The applicant used the following provisions of the law to move the court: **section 5(1)(c) of the Appellate Jurisdiction Act, Cap. 141 RE of 2002 and Rules 2 and 45(a) of the Tanzania Court of Appeal Rules 2009 as amended by GN No. 362 of 2017 and GN No. 344 of 2019.** The applicant appeared in person to argue the application. On the other hand, the respondents were absent and the court ordered the matter be disposed of in their absence because they willfully failed

to appear despite having notice about the application. The applicant prayed to argue the application by way of written submission and the prayer was granted.

In the written submission, the applicant raised a lot of issues which, some of them were not relevant in this application. Generally, the applicant argued that his appeal before this court was unfairly dismissed. Though, he conceded to have filed the appeal after the expiry of 136 days, he was of the view that the court was supposed to invoke the doctrine of overriding principle by excluding the day he spent pursuing the copy of judgment.

In determining this application, it is pertinent to consider matters to be considered before an applicant may be granted leave to appeal to the Court of Appeal of Tanzania. The grounds guiding the court to grant leave to the Court of Appeal of Tanzania are stated in several cases. I will however point out some of the cases that stated the grounds for leave to appeal to the Court of Appeal. For instance, in the case of **Rutagatina C.L. v. The Advocates Committee and Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010**, the Court stated that:

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.

In the case of **Harban Haji Mosi and Another v. Omar Hilal Seif and Another, Civil Reference No. 19 of 1997** (unreported) which was quoted with approval in the case of **Rutagatina** (*supra*) the court added more points to consider in granting leave to appeal to the Court of Appeal of Tanzania 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.

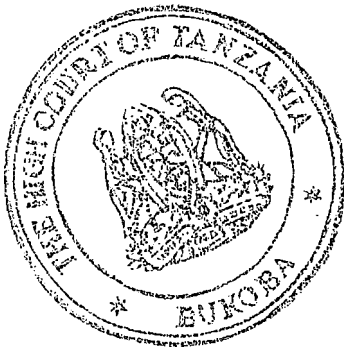
Furthermore, the case of **British Broadcasting Corporation v. Eric Sikujua Ng'maryo, Civil Application No. 133 of 2004** (unreported) which was quoted with approval in the case of **Rutagatina** (*supra*) that;

'Needles 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 novel points of law or where the grounds show a prima facie or arguable appeal.'

I have carefully perused the court file to see if the applicant's application has any of the grounds stated in the above cases. It is very unfortunately that I was not

able to see anything of public importance, points of law, possibility of success in the appeal or any issue to involve the Court of Appeal in this matter. Based on this reason therefore, I hereby dismiss the application. No order as to costs.

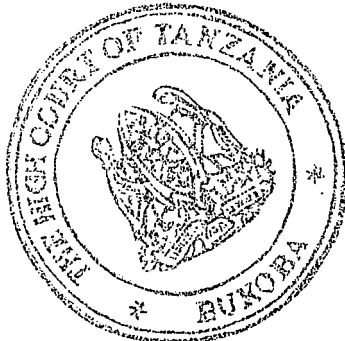
DATED at BUKOBA this 21st May, 2021.




Ntemi N. Kilekamajenga.
JUDGE
21/05/2021

Court:

Ruling delivered this 21st May 2021 in the presence of the application of the applicant and in absence of the respondent. Right of appeal explained.




Ntemi N. Kilekamajenga.
JUDGE
21/05/2021