

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

MISC. CIVIL APPLICATION NO. 349 OF 2020
*(Originating from: High Court Civil Appeal No. 25/2018 Before Hon.
Masabo J.)*

JUMA M. MATWILI..... APPLICANT

VERSUS

FINCA TANZANIA LTD.....RESPONDENT

Date of last order: 08/05/2021

Date of Ruling: 27/05/2021

R U L I N G

MGONYA, J.

Before this Court is an Application for Leave to Appeal to the Court of Appeal against the decision delivered before Hon. Masabo J. The Applicant has filed a chamber summons supported by an affidavit sworn by **EZEKIEL JOEL NGWATU**.

The Applicant in the chamber summons is seeking for the orders that:

a) That, this Honourable Court may be pleased to grant leave to the Applicant to appeal to the Court of Appeal of Tanzania against the whole decision of the High Court of Tanzania Dar es salaam District Registry in Civil Appeal No. 25 of 2018 dated 16th June 2020.

b) Costs,

c) Any other and further Orders as this Honourable Court deems fit and equitable to grant.

The matter before this Honourable Court was heard by way of written submissions. After the submission were file in accordance as scheduled by the Court, it was now the time that the same be disposed of.

Having gone through that Application, Counter Affidavit and submissions of the parties, I acknowledge the efforts of the learned Counsels on preparing the submission and I am of the view that all the submission will be considered in determination of the instant Application.

The Applicant seeks leave to appeal to the Court of Appeal for the reasons stated in paragraph **4 (3) (b) of the Magistrates Court Act Cap. 11 [R.E. 2019]** by stating that the matter before the District Court lacked jurisdiction for being above the jurisdiction of which its determination can observed under page 5 of the Judgement.

The Respondent in their Counter Affidavit challenged the Application as well as in their submission averred that the Hon. Judge was right to have decided that the matter before the District Court fell under the purview of **section 40 (3) of the Magistrate Court's Act (Supra) and Rule 3 (e) of The High Court (Commercial Division) Procedure Rules of 2012.**

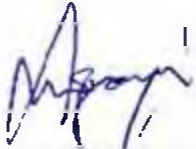
It is from the above that I am of the firm view that **paragraph 4 (a)** respectively of the Affidavit by the Applicant as it appears in the records bares a point of law of which requires audience of the Court of Appeal so as the same be settled.

Moreover, it is trite law and position of the law as outnumbered by various decisions that leave must be sought for one to appeal to the Court of Appeal where there is a point of law that a party required redress of the same.

Having observed **paragraph 4 (a)** of the affidavit, **I am hereby granting leave to the Applicant to file his Appeal to the Court of Appeal as prayed.**

It is so ordered.

Right of appeal explained.


L. E. MGONYA
JUDGE
07/05/2021

Court: Ruling delivered in chamber in the presence of Mr. Ezekiel Joel, Advocate for the Applicant, also Mr. Ezekiel Joel holding brief for Mr. Beatus, Advocate for the Respondent and Ms. Msuya, RMA this 07th day of May, 2021.


L. E. MGONYA
JUDGE
07/05/2021