

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 373 OF 2020

(Arising from Civil Appeal No. 202 of 2019)

JUMANNE SEBARUA.....APPLICANT

VERSUS

ISSA OMARY MAPESA.....RESPONDENT

Date of last Order: 08/04/2021

Date of the Ruling: 07/05/2021

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 Cap. 141 [R. E. 2019]** and **Rule 45 (b) of Tanzania Court of Appeal Rules, 2009 as amended by GN No. 362 of 2017 of Tanzania Court of Appeal (Amendments Rules 2017)**.

The order being sought herein is:

a) That leave be granted to the Applicant to appeal to the Court of Appeal against the Judgment and Decree of this honorable Court delivered by Hon. Kakolaki J.

in Civil Appeal No. 202 of 2019 delivered on July 2020.

The Application to this matter was ordered to be disposed by way of written submission. The Application has been resisted by the Respondent through his Counter Affidavit and the Reply to the submission in chief by the Applicant herein.

The Applicant herein contended that, the Applicant has the point of law for purpose of determination by the Court of Appeal of Tanzania if leave granted. As I don't intend to reproduce Parties' submissions, after I had an opportunity to go through their respective submissions, I see it proper to determine the Application as herein below:

Indeed the capital issue is whether the Applicant through the contents of his affidavit has raised a legal point fit for consideration by the Court of Appeal of Tanzania in an appeal.

I am alive that in an application for leave to appeal to the Court of Appeal of Tanzania is usually granted if there is good reason, normally on a point of law or on a point of public importance that calls for the Court of Appeal intervention.

Of course, I further understand that the purpose is to spare the court the specter of unremitting matters and to enable it to give adequate attention to case of true importance.

I am also alive that leave to appeal is not automatic but it is within the discretion of the court to grant or refuse, although the discretion must be judiciously exercised on the materials before the court.

Having gone both through the Applicant's Affidavit, supported by the written submission in this regard, I have noted that the contents in paragraph 5 of the Affidavit, are fit for consideration before the Court of Appeal of Tanzania.

It will be apposite if I reproduce the said paragraph as herein below:

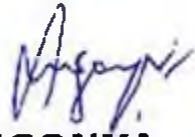
- "5. i. Whether the Appellate Court (High Court) may decide on a matter not raised in, not an agreed issue and decided by the Trial Court.***
- ii. Whether it was proper for the High Court Judge to quash a trial Court decision without giving direction to the subject matter as to who is the rightful owner.***
- iii. The High Court judge erred in law and fact by deciding that there was no breach of Sales Agreement between the parties.***

iv. That, the High Court Judge erred in law and fact by deciding that there was no breach of the terms of sales agreement.”

Now having sensibly consider the points raised in paragraph 5 of the affidavit in support of the Applicant’s submission in chief, I am indeed satisfied that the said points deserve scrutiny and decision of the Highest Court of the Land, that is the Court of Appeal of Tanzania.

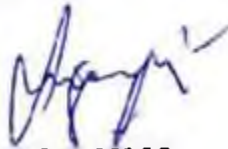
At this juncture, in the strength of the quoted points above, leave to appeal to the Court of Appeal is hereby **granted as prayed.**

I make no order as to costs.


L. E. MGONYA
JUDGE
07/05/2021



Court: Ruling delivered in chamber in the presence of Mr. Ndibalema Advocate holding brief for Mr. Zake, Advocate for the Respondent and Ms. Msuya RMA this 07th day of May, 2021.


L. E. MGONYA
JUDGE
07/05/2021

