

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

MISC. CIVIL APPLICATION No. 265 OF 2020

AMNE SHEBE.....APPLICANT

VERSUS

ZENA CHACHA.....RESPONDENT

(From decision of this court)

(Massabo J)

dated 28th April 2020

in

Pc Civil Appeal No. 53 of 2019

RULING

24th February & 20th May 2021

Rwizile, J

This application is for leave to appeal to the Court of Appeal against the decision of this court. The applicant has preferred this application under section 5(1)(c) of the Appellate Jurisdiction Act, and Rule 45 of Court of Appeal Rules. The application, as it is normally the case, is supported by an affidavit of the applicant stating reasons for which this application is grounded.

In her affidavit, the applicant avers that she was the appellant in PC Civil Case No. 53 of 2019, decided by this court on 28.04. 2020, by dismissing the same.

Now she wants to Appeal to the Court of Appeal against the judgement and decree. She further avers that being aggrieved by the finding of this court, she applies for leave to appeal to the Court of Appeal because she believes there are serious points of law and fact that need determination of the Court of Appeal. The respondent's counter affidavit asked this court to dismiss the same since it is out of time and did not comply with the law.

Parties are laymen and were not represented. The applicant argued the application orally. It was taken ex parte against the respondent since the same did not appear on the day of the hearing and never appeared since. But had raised a point that the application is out of time and is against section 5(2)(c) of the Appellate Jurisdiction Act.

When arguing the application and the point of objection together as directed. It was stated that, this application was filed on 19th May 2020 less than 45 days of the decision of this court. She prayed, the point of limited be disregarded.

Arguing the application, she complained that the contract where this application originated was forged and that the courts did not make a fair and just decision. She therefore had nothing more to say except asking this court to grant this application.

Having mediated the terms of the application and before going into the details of the same, it should be noted that the parties came to this court by way of appeal and have been in courts for nearly 4 years now. The matter started with Civil Case No. 31 of 2018 at Masanze Primary Court of Kilosa District.

Upon being aggrieved by the decision of the trial court, an appeal was preferred before the District Court of Kilosa in Civil Appeal No. 31 of 2018. This was not successful and hence PC Civil Appeal No. 53 of 2020 before this court.

From the background of the matter, it is suggestive that it started from the Primary Court. The Applicant has pegged this application as shown before under section 5(1)(c) of the Appellate jurisdiction Act, (to be referred herein as the Act), read with rule 45 of the Court of Appeal Rules. Rightly so, appeals to the Court of Appeal are governed by section 5 of the Act. It reads as follows;

5-(1) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal-

(a) against every decree, including an ex parte or preliminary decree made by the High Court in a suit under the Civil Procedure Code, in the exercise of its original jurisdiction;

(b) against the following orders of the High Court made under its original jurisdiction, that is to say—

(i) an order superseding an arbitration where the award has not been completed within the period allowed by the High Court;

(ii) an order on an award stated in the form of a special case;

(iii) an order modifying or correcting an award;

(iv) an order filing or refusing to file an agreement to refer to arbitration;

(v) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;

(vi) an order filing or refusing to file an award in an arbitration without the intervention of the High Court;

(vii) an order under section 95 of the Civil Procedure Code, which relates to the award of compensation where an arrest or a temporary injunction is granted;

(viii) an order under any of the provisions of the Civil procedure Code, imposing a fine or directing the arrest or detention, in civil prison, of any person, except where the arrest or detention is in execution of a decree;

(ix) any order specified in rule 1 of Order XLIII in the Civil Procedure Code or in any rule of the High Court amending, or in substitution for, the rule;

(c) with the leave of the High Court or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court.

(2) Notwithstanding the provisions of subsection

(1)- (a) except with the leave of the High Court, no appeal shall lie against-

(i) any decree or order made by the consent of the parties; or

(ii) any decree or order as to costs only where the costs are in the discretion of the High Court;

(b) except with the leave of the Court of Appeal, a party who does not appeal against a preliminary decree shall not dispute its correctness in an appeal against the final decree;

(c) no appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High

Court certifies that a point of law is involved in the decision or order;

(d) no appeal or application for revision shall lie against or be made in respect of any preliminary or interlocutory decision or order of the High Court unless such decision or order has the effect of finally determining the suit.

(emphasis added)

Explicitly, it is the law that appealing to the Court of Appeal under this section has two windows. **One** is done by seeking leave and the **second**, by applying for certification of the point of law. This therefore depends on the nature and origins of the case. This means, section 5(1)(c) covers situations not stated under (a) and (b) of subsection 1 of section 5.

But section 5(2) (c) deals with the situations envisaged under this section read with powers of the court under Part III (c) the Magistrates Court Act. This part III deals with powers of the Primary Court and part III (c) has something to do with powers of Appellate and Revisional Jurisdiction of the High Court in Relation to Matters Originating in Primary Courts.

In the matter at hand, it has been shown before that the case started at the Primary Court. It has come to this court by appeal. With respect to the applicant, it does not fall therefore under section 5(1)(c). It extensively falls under section 5(2) (c). The difference between the two is that in the former, the applicant is to seek leave of this court, while, in the latter situation one has to apply for certification of point of law for the Court of Appeal to determine. The applicant has applied for leave to the Court of Appeal instead of certification of the point of law.

Just as the old saying goes, the way to Babylon cannot lead you to Jerusalem, so is the matter that originated from the Primary Court. It cannot lead one to the Court of Appeal without a certificate of point of law. That said and done, since the applicant applied for leave and the matter comes from the Primary Court, this application is dismissed. Since parties are laymen, I will make no order as to costs.

AK Rwizile
JUDGE
20.05.2021

Delivered this 20th day of May 2021

AK Rwizile
JUDGE
20.05.2021

 Recoverable Signature

X 

Signed by: A.K.RWIZILE

