

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. CIVIL APPLICATION NO. 30 OF 2021

(Arising from PC Civil Appeal No. 47/2020. Originating from Civil Application No. 15/2020 C.F Civil Case No. 98/2018 at Mwanza Urban Primary Court)

CRJE CAPRIPOINT APPELLANT

VERSUS

KENYA KAZI SECURITY (T) LTD RESPONDENT

RULING

17 & 31/05/2021

RUMANYKA, J

The application under S.5(a)(c) of the Appellate Jurisdiction Act Cap 141 RE 2019 (the Act) for certification on point of law is with respect to judgment and decree of this court dated 26.02.2021 with respect to decision of Nyamagana district court, which court essentially further refused CRJE Capripoint (the applicant) extension of time within which the latter to lodge an appeal. The application is supported by affidavit of Wang Wen whose contents Mr. Emmanuel John learned counsel for the applicant

adopted on 17.05.2021 during audio teleconference hearing. Mr. I. Kisigiro learned Counsel appeared for Kenya Kazi Security (T) Ltd (the respondent). For avoidance of doubts I heard them through mobile numbers 0716 094 644 and 0763 507 726 respectively.


Two points now sought to be certified as per paragraph 6 of the supporting affidavit essentially they are; **(a)** whether the first appeal court was *functus officio* and **(b)** whether the burden of proof lied on the defendant (now the applicant).

Having had adopted contents of the counter affidavit, on his side Mr. I. Kisigiro learned counsel submitted that the application lacked merits and it was liable to be dismissed much as the burden of proof never ever shifted from the plaintiff and, with regard to the district court having had been *functus officio* parties were fairly and sufficiently heard. We humbly submit and pray that the application be dismissed with costs. Mr. I. Kisigiro learned counsel further contended.

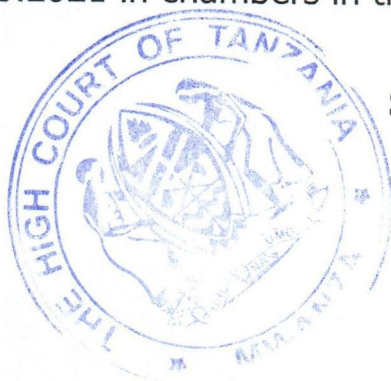
With naked eyes one looking at the provisions of the Act the key words were **an intended 3rd appeal only lying on point of law**. The issue therefore is whether with all intents and purposes the two points sought to be certified are that of law or at most a compound of points of


law and fact. The answer is in the negative much as given its nature and resultant order(s). On the aspect of whether or not the lower court was *functus officio*, the question was factual than law leave alone where, and when exactly between the parties the onus of proof shifted. Much as depending on nature and the legal effects of the allegations the general principal that the burden of proof laid on the plaintiff also it had exceptions. It is very unfortunate that Mr. E. John learned counsel did not even attempt to show that the case at hand was exceptional.

The devoid of merits application is dismissed with costs. It is so ordered.


S. M. Rumanyia
JUDGE
27.05.2021

The ruling is delivered under my hand and seal of the court this 31.05.2021 in chambers in the absence of the parties.




S. M. Rumanyika
JUDGE
31.05.2021