IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION No.286 OF 2020

(Arising from Civil Revision No. 14 of 2019)

SABIHA SOMJI..... APPLICANT

VERSUS

ARIF HUSEIN PATWA.....RESPONDENT

RULING

21st April & 9th June 2021

Rwizile, J

This application for leave to appeal to the Court of Appeal, is filed under section 11(1) and section 5 (1)(c) of the Appellate Jurisdiction Act [Cap 141 R.E 2019]. The applicant is seeking for two main orders that; *leave to the applicant to appeal to the Court of Appeal be granted and extension of time to file an application for leave to appeal to the Court of Appeal*. He has also asked for *costs and other reliefs.* This application is supported by an affidavit sworn by Jarome Joseph Msemwa. MS Mary Masumbuko Lamwai advocate appeared for the respondent and filed a counter affidavit. Before the same came to the full hearing, it was antagonised by three points of preliminary objection that;

1. *The application is bad in law for contravening the provisions of Order XLIII rule 2 of the Civil Procedure Code, Cap 33 R.E 2002 as the chamber summons has no supportive Affidavit.*

2. *That the application filed by the applicant is omnibus as it consists of two independent prayers which have to be determined separate from one another.*
3. *That all the orders made in Civil Revision No. 14 of 2019 and the proceedings thereof are interlocutory and hence this application does not lie against them.*

By the order of this court, the preliminary objections were argued by written submission. While the respondent filed his submission on the objections in time as agreed, the applicant was required to file a reply on 23rd March 2021, a day after the assigned time. He did so, without leave of the court, the same is therefore expunged from the record. Therefore, the preliminary objections were taken exparte.

Supporting the preliminary objections, it was argued on point one that; the applicant did not file any affidavit supporting the application contrary to O. XLIII rule 2 of the CPC. She said the affidavit which is annexed to this application was signed by a person who is not a party to this case, and he did not state under which capacity he signed the same. She asserted that the same is contrary to O. VI rule 14 of the CPC and the case of **Massawe and Co. vs Jashbai P. Patel and 18 Others** [1998] TLR 445.

As for the second point, the learned advocate submitted that, the application is incompetent since the applicant is seeking for two different orders in one application. She said, each order has its reasons for the same to be granted. She added that, the applicant has not moved the court for an application for extension of time since the provisions cited above are not providing for the same.

It was submitted as well, that, the applicant did not account for all days of delay. According to her, an application for extension of time has no legs to stand on, as in the case of **Sebastian Ndaula vs Grace Rwamafa,** Civil Application No. 4 of 2014 (unreported).

It was her submission on the third point that, this application is bad in law since, the applicant is intending to appeal against the preliminary or interlocutory order. According to her, the same is contrary to section 5(2)(d) of the Appellate Jurisdiction Act, which prohibits appeal or revision against interlocutory decisions. She said, decisions which cannot finally determine the suit, cannot be appealed against or revised. She relied on the case of **Hasmukh Bhagwanji Masrani vs Dodsal Hydrocarbons and Power (Tanzania) PVT Limited and 3 Others,** Civil Application No. 100 of 2013. She therefore asked this court to sustain the objections and dismiss the matter with costs.

Having considered the submission of the learned counsel for the respondent, starting with point one, it is true that a person who signed an affidavit supporting this application did not state under which capacity he signed the same. It is my considered view that, signing of pleadings is governed by law. In the circumstances of this application, the same is not I agree with the respondent's advocate that the same contradicts the law. In addition, Order. VI rule 14 is concerned. Rule 14 of O. VI states that;

> *Every pleading shall be signed by the party and his advocate (if any); provided that, where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by*

> *any person duly authorised by him to sign the same or to sue or defend on his behalf.*

For the foregoing provision, it is said, pleadings can be signed by any person duly authorised by the party to the suit. To verify that he was duly authorised, in my view, Mr. Jerome Msemwa ought to have said so in any of the paragraphs to the affidavit.

Coming to the second point of objection, respondent argued that this application is bad in law since the applicant combined two different applications under one application. I agree with the learned counsel that there are two applications under one application but I disagree that the same is bad in law, for the fact that, these two applications (orders) are referring to the same objective which is to appeal to the court of appeal. This application is similar to application filed before this court in the case of **Wilseck Kiondo vs Elly Mtangi,** Misc Civil Application No. 149 of 2019. In this case the applicant filed an application seeking for two orders; extension of time to appeal to the court of appeal and leave to appeal to the court of appeal. And the court determined both. It was stated;

> *Having granted an extension of time, it is now opportune to deal with whether the applicant has demonstrated reasons for granting leave to appeal to the Court of Appeal.*

For the foregoing reason, it is my view that, the combination of two application of this nature is not fatal. However, in this application the court was not moved as far as the application for leave to appeal to Court of Appeal is concerned. The same is not provided under the section cited in

the chamber summons, rather is provided under rule 45(a) of the Court of Appeal Rules.

Lastly, on the last point of objection, learned counsel argued that, applicant seek leave to appeal against the interlocutory order contrary to section 5(2) of the Appellate Jurisdiction Act. the said law states;

> *5.-(1)……..*
>
> *(2) Notwithstanding the provisions of subsection (1)-*
>
> *(a) ……*
>
> *(b) ……..*
>
> *(c) ……..*
>
> *(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.*

The question to be asked is whether the applicant is intending to appeal against interlocutory order. The first and fourth paragraph in the applicant's affidavit show that, the applicant is seeking to appeal against the ruling of this court when determining the preliminary objection which were raised. Applicant said, the court was wrong when held that, the application for revision was not time barred. With due respect, I must say, I am in agreement with the learned counsel for the respondent that, the same is interlocutory order, since it did not finally determine the matter.

As the provision above provides, no appeal shall lie against the preliminary or interlocutory decision or order unless the same has the effect of finally determining the suit, which in this case it did not. As it was decided by the Court of Appeal in the case of **Hasmukh Bhagwanji Masrani (supra)**. For that reason, I sustain this objection and dismiss this application with costs.

AK Rwizile
JUDGE
09.06.2021

Delivered in the presence of Mary Lamwai for the respondent, the applicant and his advocate are absent.

AK Rwizile
JUDGE
09.06.2021

Recoverable Signature

X

Signed by: A.K.RWIZILE

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DAR ES SALAAM DISTRICT REGISTRY