

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC CIVIL APPLICATION NO. 142 OF 2020

(Originating from Civil Appeal No. 17/2018 District Court Nyamagana)

ROBERT MASIBA SENGEREMA APPLICANT

VERSUS

ERASTO MASIBA RESPONDENT

RULING

27/05/2021 & 24/06/2021

W. R. MASHAURI, J;

This application is arising from Civil Appeal No. 17 of 2018 which originated from the District Court of Nyamagana against the decision of Nyamagana, Mwanza Urban Primary court in civil Case No. 522 of 2017. The application has been preferred in this court under S. 5(2) (c) of the Appellate Jurisdiction Act Cap. 141 R.E. 2019.

The relief sought by the applicant in his chamber summons is to certify points of law involved in the decision delivered on 15th October, 2020 by Hon. Ismail, J., costs of the application and any other relief this court may deem fit to grant.

The applicant is represented by Mr. Mwanaupanga learned counsel whereas the respondent Erasto Maziba appeared in person. The application has been argued by filing written submission. And before hearing his application had commenced, there were points of preliminary objection raised by the respondent to the effect that: -

1. That, the application is bad in law and highly misconceived for being made under section 5(2) (c) of the Appellate Jurisdiction Act Cap. 141 R.E. 2019. In the alternative the applicants intended appeal to the Court of Appeal of Tanzania required no certification of point of law being an appeal not originating from Mwanza Urban Primary court.
2. That, the affidavit in support of the application is fatally defective for containing the applicant signature while deposed by Mr. Masoud Shaibu Mwanaupanga Advocate for the applicant.

In his written submission in support of the 1st point of preliminary objection that the application is bad in law and highly misconceived for being made under S. 5(2) (c) of the Appellate Jurisdiction Act Cap. 141 R.E. 2019, in the alternative the applicants intended appeal to the Court of Appeal of Tanzania requires no certificate on points of law being an appeal not originating from Mwanza Urban Primary court.

That Respondent sued the applicant in Civil Case No. 522 of 2017 in the Primary Court of Mwanza where he won the case and he wanted to appeal he found was not of time. He applied to the District Court in Misc. Civil Application No. 27 of 2018 where his application was denied and dismissed for want of sufficient reasons.

In reply to the submission by counsel for the respondent in support of point of preliminary objection number one, the applicant submitted in opposition that, on 18/11/2020, the applicant in this application filed it seeking certification of point of law involved in the decision of this court delivered on 15/10/2020 in Pc Civil Appeal No. 17 of 2018 and upon received the application the applicant has raised points of preliminary objection points consisting two points alleging this application is misconceived for having been filed under S. 5(2) (c) of Cap. 141 R.E. 2015 or in the alternative the intended appeal to the Court of Appeal require no certificate being an appeal not originating from Mwanza Urban Primary court and the 2nd point being that the affidavit is defective for containing the signature of the applicant white deposed by Mr. Masoud Shaibu Mwanaupanga (Advocate for the applicant).

Having carefully read the submissions by counsel for the parties as well as the purported notice of PO. I have found the two points of preliminary

objections and the submissions in support and in opposing I have found both sufficient to dispose of the said points.

Section 5(2) (c) of the Act provides that: -

(2) Notwithstanding the provisions of subsection (I).

(c) No appeal shall lie against any decree, or order made by the consent of the parties except with leave of the High Court

Subsection (I) referred in section 5 provides that: -

(I) In civil proceedings except where any other written law for the time being in force provides otherwise.

(c) No appeal shall lie against any decision or order of the High court in any proceedings under Head (c) Part III of the Magistrates' court Act unless the High court certifies that a point of law is involved in the decision or order.

Head (c) part III of the MCA provides that:

(c) Appellate and Revisional jurisdiction of the High court in matters originating in primary court.

So the allegation in PO two in the alternative that, the applicant's intended appeal to the Court of Appeal need no certificate being an appeal

not originating from Mwanza Urban Primary is not correct. According to Section 5(2) (c) and Head C to part III of the MCA, this allegation by counsel for the respondent is a farce. An appeal to the Court of Appeal is indispensable even if the matter originates from the primary court and it needs leave of the High court. Upon certifying that, there is a point of law involved.

And for the point of PO that the applicant's affidavit is bad in law for having a signature of the applicant while deposed by his advocate Mr. Masoud S. Mwanaupanga. At law this kind of objection leaves much to be desired, in law in particular the constitution of the URT of 1977 as amended from time to time as well as the advocates ordinance, an Advocate is a recognized agent to have full mandate to appear in court on behalf of the party be a plaintiff or defendant or even the accused in a case, and being a recognized agent, he is allowed to sign an affidavit or counter affidavit of a party of whom he is engaged to appear on behalf of such a party.

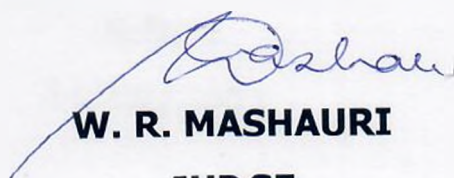
In this application therefore the points of objection number 1 and 2 respectively lack merit. I do hereby overrule all for lack of merits.

This application is filed in this court under s. 5(2) (c) of the appellate Jurisdiction Act which impliedly connotes that the applicant is intending to appeal against the decision of this court in (PC) Civil Application No. 17 of 2019. The applicant therefore invites this court to certify what he called the points of law involved in the decision of this court.

I have carefully gone through the affidavit deposed by the applicant and I am of opinion that, this application is not grantable as the intended appeal has no reasonable chances of success as the whole application reveal only disturbing features as to require the guidance of the Court of Appeal as even the purported grounds of appeal are frivolous, vexation useless and hypothetical.

Accordingly, I overrule all the two points of preliminary objection as well as dismissing the intended leave to appeal sought by the applicant.




W. R. MASHAURI
JUDGE
24/06/2021