

**IN THE HIGH COURT OF TANZANIA
IN THE MWANZA DISTRICT REGISTRY
AT MWANZA**

MISC. CIVIL APPLICATION NO. 33 OF 2021

**HAJI KIRUKU.....APPELLANT
VERSUS
BAGAILE KINUNI.....RESPONDENT**

EXPARTE RULING

28th & 30th June, 2021

RUMANYIKA, J

With respect to exparte judgment and decree dated 26/03/2021, therefore for a 3rd appeal the application for leave, and, it appears for a certificate on point of law it is brought under Section 5(i)(c) of the Appellate Jurisdiction Act Cap. 141 RE. 2019 and Rule 45(a) of the Court of Appeal Rules, 2009. It is supported by affidavit of Haji Kiruku whose contents Haji Kiruku (he applicant) adopted on 28/06/2021 during audio teleconference hearing through mobile number 07648208857. He appeared in person.

Bagaile Kinuni (the respondent), according to copy of the returned summons recorded as having had refused service on 19/05/2021, by order of the court his appearance therefore was dispensed with hence the exparte ruling.

In a nutshell the applicant submitted that upon filing a notice of appeal the intended appeal had over whelming chances of success because he in fact had proved his case on the balance of probabilities. That's it.

The bottom line, and it is trite law the issues are; **(a)** whether there were points by way of appeal worth to be considered by the Highest found of justice **(b)** whether there were point(s) of law as such to be certified for determination by Highest fountain of justice.

There was, be it in the supporting affidavit, in the chamber summons or applicant's oral submissions no point of fact, of law or both that raised any such general importance by way of appeal determinable by the Court of Appeal. If anything, under paragraph 3 of the affidavit the applicant suggested a point whether the applicant's case was on the balance of probabilities proved this, in my considered opinion by any stench of the imagination it was neither a point of law subject of certification nor was it worth the name a point of general importance determinable by the Court of Appeal of Tanzania but simply a factual finding concurrently reached at by the two courts below and now this court much as also, it is trite law that unless there were peculiar circumstances, very seldom than not appeal courts disturbed concurrent factual findings of the courts below (case of

Peter Abel Kirumi v. Republic, Criminal Appeal No.25 of 2016 (CA))
unreported.

The devoid of merits dual application is dismissed. Each party shall bear their costs because the respondent he neither appeared nor file only reply. It is so ordered.


S.M. RUMANYIKA

JUDGE

29/06/2021

The ruling delivered under my hand and seal of the court in chambers this 30/06/2021 in the absence of the parties.




S.M. RUMANYIKA

JUDGE

30/06/2021