

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. CIVIL APPLICATION NO. 44 OF 2021

(Arising from Civil Appeal No. 51 of 2020)

MICHAEL OBEY DAUD..... APPLICANT

VERSUS

NATIONAL MICROFINANCE BANK LTD.....RESPONDENT

RULING

05th & 8th July, 2021

RUMANYIKA, J

With respect to judgment and decree of 20/04/2021, under S. 5(1)(c) of the Appellate Jurisdiction Act Cap. 141 and Rule 45(a) of the Court of Appeal Rules, 2009, represented by N. Angelo James learned counsel, Michael Obey Daud (the applicant) applied for leave to appeal to the Court of Appeal of Tanzania on points :- **(i)** Whether the 1st appeal court was right not considering the applicant's grounds of appeal **(ii)** Whether with respect to the means, through ATM or mobile phone the applicant's money was withdrawn, the 1st appeal court properly evaluated and apprehended the evidence well within time one having had lodged a notice of appeal

and the instant application, the applicant wasn't at this stage obliged to state merits of, or, by way of appeal points of law determinable by the Court of Appeal (case of **Bulyankhulu Gold Mining Ltd & 2 Others v. Petro Lubi Tanzania & Another**, Civil Application No. 364/16 of 2017 (CA) unreported).

Having had adopted contents of the counter affidavit, Dr. G. Mwaiondola learned counsel for National Microfinance Bank Ltd (the respondent) he submitted that the application lacked merits and it was liable to be dismissed because in order for this court to grant leave of appeal, contrary to the rule in the case of **The British Broadcasting Corporation vs. Erick Sikujua Ng'imaryo**, Civil Application No. 138 of 2004 (CA) unreported, the instant application did not meet the conditions namely if there were issues of general importance, or noble points of law, or an arguable appeal and the supporting affidavit should have contained the three conditions much as, now intended it was only a 2nd appeal and this court had no duty of rubber stamping.

The issue, and it is trite law is whether there were issues of general importance, noble points of law or any intended arguable appeal (case of **the British Broad Casting Corporation** (Supra)).

the applications for leave or even for the intended appeals this court assuming the role of the highest fountain of justice.

In the upshot, the application is granted. Each party shall bear their costs given the circumstances and nature of the application. It is so ordered.


S.M. RUMANYIKA
JUDGE

05/07/2021

The ruling delivered under my hand and seal of the court in chambers this 08/07/2021 in the absence of the parties.




S.M. RUMANYIKA
JUDGE

08/07/2021