

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

CIVIL APPLICATION No. 45 OF 2019
(Arising from Civil Appeal No. 09/2018 of the High Court of Bukoba)

AGROSERVE COMPANY LTD.....APPLICANT
VERSUS
SME IMPACT FUND CV1ST RESPONDENT
NUTMEG AUCTIONEERS & PROPERTY MANAGERS2ND RESPONDENT
GEORGE AWLE.....3RD RESPONDENT

RULING

15th and 15th July 2021

Kilekamajenga, J.

The applicant preferred this application seeking leave to appeal to the Court of Appeal of Appeal of Tanzania. The application was made under sections 5(1) (c) and 11(1) of the Appellate Jurisdiction Act, Cap. 141 RE 2002. The application was supported with an affidavit deposed by the counsel for the applicant, Mr. Aaron Kabunga (Advocate). When the application was scheduled for hearing, the applicant was present and represented by the learned advocate, Mr. Aaron Kabunga whereas the respondent enjoyed the legal services of the learned advocate, Mr. Davis Muzahura.

In the oral submission, Mr. Kabunga argued that there was an illegality in the decision of the High Court that prompted the applicant to lodge notice to the Court of Appeal of Tanzania. He submitted further that the High Court erroneously decided that the case was a land dispute while the same was hinged

on the loan agreement. Mr. Kabunga also argued that Civil Case No. 1 of 2017 which concerns the parties was not appealed against instead they appealed against Civil Appeal No. 1 of 2018. He finally urged the Court to allow the application.

On the other hand, Mr. Muzahura for the respondents reminded the Court that the leave to appeal to the Court of Appeal is within the discretion of the Court and may be granted where there is an issue of general importance or novel point of law. Also, leave may be granted where the intended appeal is arguable. On this point, he invited the Court to consider the cases of **British Broadcasting Corporation v. Erick Sikujua Ngomaryo, Civil Application No. 138 of 2004; Swissport Tanzania Limited and Precision Air Service Ltd v. Michael Lugaiya, Civil Appeal No. 119 of 20019.**

Concerning the error on the case number, the counsel was of the view that the error was not fatal. He urged the Court not to be a conduit pipe for baseless cases as it was stated in the case of **Dadu Kidendes v. National Microfinance Bank and Shadia Salehe Kamani, Misc. Land Application No. 18 of 2021.** He finally called upon the Court to dismiss the application.

When re-joining, the counsel for the applicant argued that the right to appeal is the constitutional right and therefore the parties have the right to approach the Court of Appeal of Tanzania.

In determining this application, I am fully aware that the leave to appeal to the Court of Appeal of Tanzania is within the discretion of this. However, leave may only be granted where there is good reason, normally on a point of law or on a point of public importance that calls for the Court of Appeal's intervention. See the case of **Rutagatina C L v. The Advocates Committee and Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010, CAT at Dar es Salaam.**

I am also alive of the fact that leave may be granted where the appeal has possibilities of success. I have carefully considered the instant case and I find disturbing features which may invite the intervention of the Court of Appeal of Tanzania. I hereby grant the leave for the applicant to approach the Court of Appeal of Tanzania. Costs of the case to follow in the course. It is so ordered.

Dated at Bukoba this 15th July 2021.




Ntemi N. Kilekamajenga
Judge
15th July 2021

Court:

Ruling delivered this 15th July 2021 in the presence of Mr. Deogratious Mombeki and in absence of the respondents.

