

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
BUKOKA DISTRICT REGISTRY  
(LABOUR DIVISION)**

**AT BUKOKA**

**MISC.LABOUR APPLICATION NO. 6 OF 2020**

*(Arising from Labour Revision No.12 of 2018 of Bukoba High Court and Complaint No. CMA/BUK/95 /2017 in the Commission for Mediation and Arbitration of Bukoba)*

**VEDASTO BLASIO BUKULU .....APPLICANT**

**VERSUS**

**KAGERA SUGAR LIMITED ..... RESPONDENT**

**RULING**

**13/08/2021 & 03/09/2021**

**NGIGWANA, J**

This is an application for leave to appeal to the Court of Appeal. It is made under section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141. RE 2019. The applicant is asking this court to grant leave to appeal to the Court of Appeal against the decision of this court in Labour Revision No.12 of 2018 which was delivered on 21/08/2020 (Hon. L. G. Kairo, J (now JA). This application is supported by the affidavit drawn sworn and filed by the applicant himself. The application is opposed by the respondent.

A brief background of this matter is to the effect that, the applicant who was employed as a security guard by the Respondent namely Kagera Sugar Limited filed a Labour Dispute at the Commission for Mediation and

Administration (CMA) at Bukoba claiming that there was Renewal of the employment contract between him and the Respondent by conduct and further that the said contract was prematurely terminated, and that was illegal and unfair. The parties were unsuccessfully mediated, as result, the dispute matured for arbitration whereas the Hon. Arbitrator after hearing both parties resolved that there was no automatic renewal or renewal by conduct of the said contract, and for that case, there was no unfair termination. Apart from the said finding, the Hon. Arbitrator ordered the Respondent to issue a certificate of service to the applicant.

Aggrieved by the decision, the applicant approached this court Via Labour Revision No.12 of 2018 for redress. Eventually, that is to say on 21/08/2020 the matter was accordingly dismissed for want of merit.

The applicant was dissatisfied by the said decision, hence lodged this application seeking for leave to appeal to the Court of Appeal of Tanzania to impugn the same

When the application was called on for hearing, the applicant had the services of Mr. Deonis Mujuni, learned advocate while the respondent had the services of Mr. Richard Mzule, learned advocate.

In support of the application, Mr. Mujuni relied in paragraph 5 of the applicant's affidavit which is coached in these words;

*"That the leave of this court is sought on the ground that the previous decisions did not make the finding on how the second employment contract which commenced on 01/11/2017 started and what were the conditions; whether the oral agreement of one year evidenced by the applicant could be*

*overtaken by the notice to terminate such unwritten contract which notice was dated 30/11/2017 one month after the end of the previous contract”*

The counsel for the applicant further submitted that the applicant wants the Court of Appeal of Tanzania to determine whether there was an automatic renewal of the contract of employment between the applicant and the respondent.

In riposte, Mr. Richard Mzule, strongly resisted the application. He argued that an application for leave to the Court of Appeal is not automatically granted since there are factors to be considered before granting or refusing to grant. He referred this Court to the case of **Sango Bay Estate Ltd and Others versus Dresdner Bank** (1972) EA 17 to emphasize that the applicant must show that there is a serious matter which need intervention of the Court of Appeal. He also made reference to the case of **Rugatina C. L versus The Advocates Committee & Another**, Civil Application No.98 of 2010 CAT (Unreported). The learned Counsel went on submitting that reading paragraph 5 of the affidavit which is the center of the applicant application and submission, there is nothing showing that intervention of the Court of Appeal is necessary because the application is based on facts and not point of law. The learned counsel referred the Court to the case of **Fortunatus Lwanyantika Masha versus Icea Lion Insurance Co. Ltd & Another**, Misc. Civil Application No.134 of 2020 HC Mwanza Registry (Unreported). He ended his submission praying for the dismissal of the application for want of merit.

In brief rejoinder, Mr. Mujuni appreciated the cases referred by Mr. Mzule, but insisted that there is point of law involved based on contract which need to be determined by the Court of Appeal of Tanzania.

Having heard the submissions for and against the application, I will determine whether the application is meritorious. The Court of Appeal Section 5 (1) (c) of the Appellate Jurisdiction Cap 141 R: E 2019 provides that;

*"In civil proceedings, except where any other written law for the time being in force provides otherwise, **an appeal shall lie to the Court of Appeal with the leave of the High Court or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court'***

It is therefore apparent that appeal to the Court of Appeal is not automatic. It is within the discretion of the Court to grant or refuse leave. However, such discretion must be exercised judiciously.

In the case of **Ramadhani Mnyanga versus Abdala Selehe** [1996] it was held that

*"For leave to be granted, the application must demonstrate that there are serious and contentious issues of law or fact fit for consideration of appeal"*

Furthermore, in the case of **British Broadcasting Corporation versus Erick Sikujua Ng'amaryo**, Civil Application No.133 of 2004 which at page 7 the Court of Appeal quoted the holding in the case of **Harban Haji Mosi and Another versus Omar Hilal and another**, Civil reference No.19 of 1997 (Unreported) where it was held that:

*"Leave is granted where the proposed appeal stands reasonable chances of success or where but not necessarily, the proceedings as a whole reveal such disturbing features as require the guidance of the Court of Appeal. The purpose of the provision is, therefore, to spare the Court the specter of unmeriting matters and to enable it to give adequate attention to cases of true public importance."*

From the above authorities including those referred to this court by the learned counsel for the respondent, we can learn that there are conditions to be met for the grant of leave to appeal to the Court of Appeal, amongst them being that; the appeal would have reasonable prospect of success, there are compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration, the decision sought to be appealed did not dispose of all the issues in the case, the proceedings as a whole reveal disturbing features requiring the Court of Appeal intervention and provision of guidance, there is point of law or point of public importance detected from the appealed decision and that there are arguable issues fit for the consideration of the Court of Appeal.

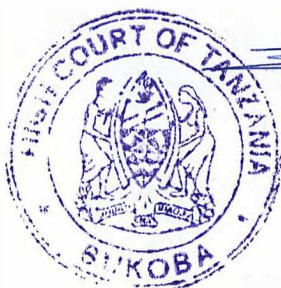
At this juncture, I would like to state very clearly that I have no mandate to go into the merits or deficiencies of the judgment or orders of the Hon. Judge or to analyze the grounds of the proposed appeal will succeed because this is not the Court of Appeal, and application of this nature does not mean re-hearing of the appeal. All what I am duty bound to do is to consider whether there is real prospect of success, or arguable issues or compelling reasons, or disturbing features, or point of law or point of public importance requiring the court of appeal intervention.

It is a trite principle of law that the parties are bound by their pleadings and that any submission led by any of the parties which does not support the averments in the pleadings, or put in any other way, which is at variance with the pleadings goes to no issue and must be disregarded by the court. See **YARA TANZANIA LTD V. CHARLES ALOYCE MSEMWA t/a MSEMWA JUNIOR AGROVET AND ANOTHER**, Commercial case No.5/2013 High Court (Commercial Division) at DSM (Unreported).

I have carefully gone through the proceedings of this court as a whole to see whether the same reveal disturbing features requiring the Court of Appeal intervention and provision of guidance but found no disturbing features.

Furthermore, it must be noted that in this application the applicant is bound by Paragraph 5 of his affidavit. From the same, and submission made by the applicant's counsel, I find nothing contentious neither legal nor factual exhibited that is worthy of consideration by the Court of Appeal.

Consequently, the application is hereby dismissed. This being a labour matter, I make no order as to costs.



E. L. NGIGWANA

JUDGE

03/09/2021

Dated at Bukoba this 3<sup>rd</sup> day of September, 2021

Ruling delivered this 3<sup>rd</sup> day of September, 2021 in the presence of the Applicant in person, Mr. Mzule, learned advocate for the respondent, and Mr. E. M. Kamaleki, Judges' Law Assistant.



  
E. L. NGIGWANA

JUDGE

03/09/2021