

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

MISC CIVIL APPLICATION NO. 52 OF 2021

(Arising from Civil Appeal No. 52/2020)

1. JULIETH JASONN KASHAIJA } APPLICANTS
2. OSWARD BINAMUNGU }

VERSUS

1. MARY ZABRON KAVUGHA } RESPONDENTS
2. OCTOVIAN JOHN MIGIRE }

RULING

23/8/2021 & 17/09/2021

W. R. MASHAURI, J;

This is an application for leave to appeal to the Court of Appeal filed by the applicants Julieth Zabron Kashaija and Oswald Binamungu.

The application has been made under section 5(I) (c) of the Appellate Jurisdiction Act (Cap. 141) R.E. 2019 and rule 45(a) of the Court of Appeal Rules.

The relief sought by the applicants is:

1. That, this court be pleased to grant leave to the applicants to appeal to the Court of Appeal of Tanzania against the judgment and decree of the

High court of Tanzania at Mwanza in Civil Appeal No. 52 of 2020 arising from the Resident Magistrates' court for Mwanza in Civil Case No. 103 of 2019.

2. Costs of this application be provided for.
3. Any other order which the court may deem fit and just to grant under the circumstances of this application.

The applicants are represented by Mr. Geoffrey Kange advocate and the respondent by Mr. Erick advocate.

When the matter was called in court for mention on 23/08/2021. Mr. Geoffrey counsel for applicants informed the court to have been served the respondents with the application and Mr. Erick learned counsel for the respondents conceded to have been served with the application, but he submitted in addition thereof that, upon gone through the applicants' affidavit did not find any need to file counter-affidavit as the respondents were conceding to the application for leave to appeal to the Court of Appeal. The concession of which was not objected by Mr. Geoffrey learned counsel for the applicants.

It must therefore be noted that, except the applicants' affidavit, there is no submission made by the applicants advocate to support the application

nor is there any prima facie issues specified by the applicant which this court must look at so as to reach a verdict as to whether there were serious contentious issues of legal and/or factual matters which were not deal with by the subordinate court which are fit to be taken to the court of Appeal for consideration.


Normally in an application for leave to appeal to the Court of Appeal, the High court only looks at the prima facie issues and it does not go into the root of evidence.

Leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that, there are ground of appeal which merit serious judicial consideration.

This application for leave to appeal to the Court of Appeal is dismissed for want of prima facie grounds which merit serious consideration by the Court of Appeal.

No order as to costs is made.




W. R. MASHAURI
JUDGE
17/09/2021

Date: 17/09/2021

Coram: Hon. W. R. Mashauri, J

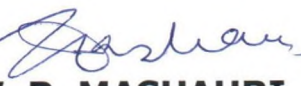
Applicants

Respondents:

B/c: Elizabeth

Court: Ruling delivered in court in absence of all parties and their learned counsel on line this 17th day of September, 2021. Parties be informed of the outcome and explained the right to appeal.




W. R. MASHAURI
JUDGE
17/09/2021