

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

**AT BUKOBA**

**MISC. CIVIL APPLICATION NO. 29 OF 2021**

**THE REGIONAL MANAGER (TRA).....APPLICANT**

**AND**

**ATIA NASSORO.....RESPONDENT**

**RULING**

**Date of Last Order: 29/09/2021**

**Date of Ruling: 08/10/2021**

**A.E. Mwipopo, J.**

This application for leave to appeal to the Court of Appeal against the decision of this Court dated 11<sup>th</sup> December, 2020 in the Misc. Civil Application No. 22 of 2018. The application is made under section 5(1) (c) and 11(1) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019. The Regional Manager (TRA) filed this application praying for the Court to grant leave to appeal to the Court of Appeal against the above cited decision of this Court. The application is made by Chamber Summons supported by Affidavit of Hospis Maswanyia, Applicant's Legal Counsel. The Respondent namely Atia Nassoro opposed the application for leave through Counter Affidavit of Aaron Kabunga, Respondent's Advocate.

In brief, Mr. Hospis Maswanyia, Senior State Attorney who represented the Applicant in this matter submitted in support of application that they were not satisfied with the decision of this court in Misc. Application No 22 of 2018. The said illegalities can be cured through appeal before the Court of Appeal. The illegalities includes the issue of jurisdiction of High Court to entertain the dispute about tax. The Counsel is of the opinion that the same was supposed to be heard and determined by Tax appeal tribunal and not a normal court. He argued that the act of compounding and the sale of the motor vehicle was done in accordance with tax laws. The second illegality is the abuse of the discretionary powers of the High Court in the application for extension of time where it denied the Applicant leave to appeal out of time prescribed by the law.

The Respondent who enjoyed the service of Mr. Frank John, Advocate, opposed the application for leave. He submitted that leave is a matter of law and the Applicant has to show in his Affidavit that the Appeal sought raises issue in the content for consideration of the Court of Appeal. That, the issue has to be shown in the chamber summons or in the Affidavit and it is not granted automatically as it is a discretion of the court. The purpose of the leave is for the court to look at the issue to be considered by the Court of Appeal. To support his position he cited the case of **British Broadcasting Corporation (BBC) V. Eric Sikujua Ngamaryo**, Civil Application No, 138 of 2004, CAT at Dar Es Salaam,

(unreported), where at page 7 the Court of Appeal provided features which require the guidance of the Court of Appeal. He also cited the decision of this Court in the case of **Dauda Kidedei V. NMB PLC and Another**, Misc. Land Application No. 18 of 2021, High Court, at Mwanza, where it was held that the court shall not always reduce itself into a conduct pipe which allows all application for leave to go to the Court of Appeal. He said that the Applicant has failed to show the features or parts which had to be adjudicated by the Court of Appeal in the intended appeal.

In his rejoinder, the learned State Attorney stated that the discretion of this court to grant leave has to be exercised judiciously. He said that they have shown the reason for their intention to appeal to the Court of Appeal. He argued that the Respondent counsel said nothing on the reasons he presented.

Having gone through affidavits and parties' submissions, the issue for determination is whether the application for leave to appeal to the Court of Appeal has merits.

As it was submitted by both parties, it is the discretion of this to grant or refuse application for leave. In **Rutagatina C.L. V. The Advocates Committee and Another**, Civil Application No. 98 of 2010, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), the Court held that:-

*"An application for leave is usually granted if there is good reason, normally on a point of law or a point of public importance that calls for Court's intervention."*

It was rightly submitted by the Respondent that as a general principle leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal. Leave will not be granted where the grounds of appeal are frivolous, vexatious or useless or hypothetical as it was held by the Court of Appeal in the case of **British Broadcasting Corporation (BBC) V. Eric Sikujua Ngamaryo**, (Supra).

The affidavit in support of the application did not set out the matters subject of intended appeal. It was during submission where the learned Counsel for the Applicant revealed that the matter to be considered and determined in the intended appeal to the Court of appeal are points of illegalities. The said points of illegalities includes that there issue of jurisdiction of trial Court to entertain the dispute about tax which was supposed to be heard and determined by Tax appeal tribunal since compounding and the sale of the motor vehicle was done in accordance with tax laws. The second point of law is the abuse of the discretionary powers of the High Court in the application for extension of time where it denied the Applicant leave to the appeal out of time prescribed by the law. The Counsel did not explain how the High Court abused its discretionary powers.

The learned Counsel for the Respondent submitted that leave is a matter of law and the Applicant has to show in his Affidavit that the Appeal sought raises issue in the content for consideration of the Court of Appeal. That, the issue has to be shown in the chamber summons or in the Affidavit and it is not granted automatically as it is a discretion of the court. I agree with the Counsel for the Respondent that the said points were revealed by the Applicant in his submission as they are not contained in his affidavit or chamber summons. The point of illegalities submitted by the Applicant's Counsel are mere counsel's statement made from the bar. The Appellant ought to have included those points in the affidavit. The Court of Appeal was of the same position in the case of **Tanzania Union of Industrial and Commercial Workers (TUICO) at Mbeya Cement Company Ltd Versus Mbeya Cement Company Ltd and National Insurance Corporation (T) Ltd [2005] TLR 41** stated that:

*"It is now settled that a submission is a summary of arguments. It is not evidence and cannot be used to introduce evidence. "*

The remedy where the party made submission from the bar is for the Court to decline to consider it as it was held by the Court of Appeal in **Fweda Mwanajoma & Another v. Republic**, Criminal Appeal No. 174 of 2004; in **Farm Equipment Company Limited v. Festo Mkuta Mbuzu**, Civil Application No. 111 of 2014; and in **Hassan Kapera Mtumba V. Salim Suleiman Hamdu**, Civil

Application No. 505/12 of 2017, Court of Appeal of Tanzania, at Tanga, (unreported).

Similarly, borrowing the position in the above mentioned cases and applying it in the application at hand, the submission by learned counsel Maswanyia that the points to be considered by the Court of Appeal in the intended appeal are illegalities cannot be considered by this Court. In absence of the matters to be considered and determined by the Court of Appeal means that the Applicant has failed to satisfy the Court as for the reason for applying for the leave to appeal.

For that reason, I refuse to grant leave to appeal to the Court of Appeal and the application is hereby dismissed. As the Respondent did not pray for cost, each party has to take care of its own cost.



A. E. Mwipopo

**Judge**

08.10.2021

**Court:** The ruling was delivered today this 08.10.2021 in chamber under the seal of this court in the presence of Ms. Jesca Majigo for the Applicant and Advocate

Frank John for the Respondent who also hold brief by Mr. Maswanyia Senior State  
Attorney for the Applicant



A. E. Mwipopo

**JUDGE**

08.10.2021