CN IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF ARUSHA)

AT ARUSHA

MISC. CIVIL APPLICATION NO. 80 OF 2020

(From PC Civil Appeal No. 1 of 2019, Karatu District Court Civil Appeal No. 9 of 2018 Originating from Karatu Primary Court Civil Case No. 28 of 2018)

PASKALI BAHA GAMO.....APPLICANT

VERSUS

BOAY TLUWAY .....RESPONDENT

RULING

01/09/2021 & 13/10/2021

GWAE, J

Following the Respondent's success in a PC. Civil Appeal No. 64 of 2017 by this Court (**Robert, J**) whose decision was delivered on the 10th July 2020, the applicant named above filed a notice of appeal on the 20th July 2020. Subsequently to his filing of the notice, the applicant filed this application for leave to Appeal to the Court of Appeal of Tanzania and certificate on points of law on the 10th October 2020.

The applicant's application is duly supported by his affidavit whereas the respondent resisted this application via his counter affidavit however when both parties appeared before me on 1st September 2021 for hearing, the respondent expressly stated that he does not oppose this application.

It is general principle that, in any matter that originates from primary court, any party who is aggrieved by a decision of the High Court when exercising its appellate jurisdiction as the 2nd appellate court or its revision power is required to seek and obtain a certificate on point (s) of law for Consideration by the Court of Appeal of Tanzania in terms of section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141, Revised Edition, 2019 (See also the decision of the Court of Appeal of Tanzania in **Mabalanganya v. Sanga** (2005) 1 EA 236).

Though this application is not opposed but yet I am supposed to ascertain if the demonstrated points of law are worth for consideration by the Court of Appeal of Tanzania. And before doing so, it would be apposite to have the brief background of the matter, it is simple and as follows; that, the dispute between the parties was on breach of contract emanating from the agreement that the respondent was to hand over his motor vehicle with Registration Number No. T. 557 CMA, to the applicant for business purposes for a period of twelve months with agreement that the applicant would pay a total of Tshs. 15,000,000/= denoting that Tshs. 1,250,000/= would be paid in each month. The parties' contract commenced on the 17th June 2017 and ending on the 16th June 2018. The applicant was however able to pay Tshs. 4, 600,000/= to the respondent. Nevertheless, he then defaulted the agreed payments for more than five months. Thus, respondent's institution of these proceedings.

Before the trial court, the respondent claimed a payment of Tshs. 7, 400,000/= being payment of 9 months and 27 days, breach of contract, an order directing return of the motor vehicle without any condition, payment of general damages and costs of the suits. In its conclusion, the trial court ordered that the respondent to be paid Tshs. 5,400,000/= and return of the motor vehicle to the respondent

The applicant was aggrieved by the trial's court decision. He filed his appeal to Karatu District Court where the trial court's order as to return of the car and payment of Tshs. 5,400,000/= were quashed and set aside and in lieu thereof the applicant was ordered to pay the respondent Tshs. 7,400,000/=only.

On an appeal filed by the respondent to the court, it was held that, the respondent was entitled to receive his motor vehicle back and obtain damages for the period which the applicant stayed with the car without payments. It was further held that, it would be unjust for the applicant who breached the contract to be awarded for his breach of the contract by being allowed to obtain the respondent's motor vehicle for lesser payment than the amount he would have been paid according to the agreement.

Aggrieved by the judgment and decree of the court, the applicant has filed this application demonstrating two (2) point for consideration by the Court of Appeal. these are;

1. Whether this court was justified in deciding the matter before it as it did as regard to the reliefs claimed by the respondent
2. Whether this court, on the available evidence, has made a substantial justice by upsetting the decision of the District Court and conforming the decision of the trial court

Coming to the merit of the application, it is trite law that, in order for the High Court to grant leave and certificate on points of law, the applicant must demonstrate points of law in the decision intended to be appealed which needs a serious consideration by the Court of Appeal. The points of law shall not be matters of facts and evidence, those points must be purely points of law. This position has been pronounced in a number of cases just to mention a few; in the case of **Simon Kabaka Daniel vs. Mwita Marwa Nyang'anyi & 11 others** (1989) TLR 64 it was stated that;

> "In application for leave to the Court of Appeal the application must demonstrate that there is a point of law involved for the attention of the Court of Appeal....."

Going through the judgment of this court and the points of the law demonstrated by the applicant, I am not persuaded if the same are points of law worth for determination by the Court of Appeal. I say so simply because both points demonstrated herein are not pure points of law fit for Consideration by the Court of Appeal except analysis of evidence adduced before the trial court and justification in granting reliefs. The essence of enactment of section 5 (1) of

the Appellate Jurisdiction Act (Cap 141, Revised Edition, 2019) should be applied strictly by not certifying points which are ordinarily not points of law.

Consequently, the applicant's application is dismissed with no order to costs

Order accordingly.

M. R. GWAE
JUDGE
13/10/2021