

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

MISC. CIVIL APPLICATION NO. 117 OF 2020

(C/F the High Court of Tanzania in PC Civil Appeal No. 03 of 2020, Arusha District Court Appeal No. 13 of 2019, Originating from Arusha Urban Primary Court Civil Case No. 01 of 2019)

GODFREY CYPRIAN JAMES.....APPLICANT

Versus

GRACE NDEWARIO MANANG.....RESPONDENT

RULING

24th August & 15th October, 2021

MZUNA, J.:

This court is invited to grant leave as well as certify whether there is a point of law worth consideration by the Court of Appeal. The applicant has filed this application under Section 5(2)(c) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2002]. He is challenging the decision of this Court in Civil Appeal No. 3 of 2020 which was delivered on 16th November, 2020. The application is supported by the affidavit of the learned Advocate Ally Abdallah Mheyellah whereas the Respondent contested the application through her counter affidavit.

The Primary court as well as the Arusha District court, upheld the applicant's application vides Civil Case No. 1 of 2019 and Civil Appeal No. 13 of 2019, respectively, that the respondent breached the contract entered into between them. The High court vides Pc Civil Appeal No. 03 of 2020 set aside the two decisions and hence the present application.

The hearing of this application was done through oral submission. During hearing Mr. Mbwambo learned counsel represented the applicant. Mr. Aman Jackson learned advocate was engaged by the respondent for drawing but during hearing the respondent appeared in person, unrepresented.

In the chamber summons supported by an affidavit, the following points were outlined as being considered points of law to be certified by this Court to the Court of Appeal:-

- 1. That the Honorable High Court Judge erred in both law and fact by misinterpreting the Banking and Financial Institutions Act and rejecting the claims that are to be guided under the law of Contract Act, Cap. 345.*
- 2. That, after rejecting the contracts tendered for want of stamp duty, the Honorable High Court Judge erred in law and fact by rejecting the facts within which the respondent admitted to be indebted to the applicant.*
- 3. Any other order this Court deems fit to grant.*

The relevancy of certification and leave according to Mr. Mbwambo, is premised on the fact that this matter originates from the Primary court. Arguing point one he said, the tendered contract before the Court was to be interpreted in accordance to section 10 the Law of Contract Act [Cap. 345 R.E 2019]. He argues so because he believes the loan was an agreement between the parties of lending Tsh. 15,000,000/= which the respondent received from the applicant in order to serve her house from being sold.

He submitted further that Honorable Judge erred in construing the said agreement basing on section 7 of the Law of Banking and Financial Institutions Act. That, the honorable Judge to rule that it was wrong for the loan to have interests because the applicant was not a lending institution, needs interpretation of the Court of Appeal.

On the second point Mr. Mbwambo contended that, the Honorable Judge erred in nullifying the contract on the reason that it had no stamp duty while the respondent admitted to be loaned by the applicant. Therefore, he also argued this point to be certified as a point of law to the Court of Appeal for determination.

In the submission against, the respondent argued that the transaction was of a business oriented. Therefore, it was right to be interpreted as the Honorable Judge did because the applicant had no lending permit with interests. On point two the respondent submitted that lack of stamp duty is fatal because the government did not collect the fees/tax therefrom. In rejoinder Mr. Mbwambo reiterated his submission in chief.

Having considered the application together with the submissions presented by both parties, it is indeed the requirement of the law that, no appeal shall lie against the decision of the High Court originating from Primary Courts unless leave and certificate on points of law worthy to be determined by the Court of Appeal are granted by the High Court.

Leave is grantable where the grounds of appeal raise issues of general importance or novel points of law or a prima facie or arguable appeal. Such leave is not granted where the grounds of appeal are frivolous, vexatious, useless or hypothetical. It was held in the case of **Ali Vuai Ali Vs. Suwedi Mzee Suwedi** [2004] TLR 110, CAT, that:-

"According to section 5(2) (c) of the Appellate Jurisdiction Act 1979, a certificate on a point of law is required in matters originating in Primary Courts; it is provided therein that an appeal against the decision or order of the High Court in matters originating in Primary Courts would not lie unless the High Court certifies that a point of law is involved in the decision or order."

The court having heard the arguments of both parties agree that indeed the Honorable Judge based his decision on the issue that the applicant had no license to loan the respondent because the transaction was commercial in nature which could only be done with licensed financial institutions. He ruled that the transaction was illegal and void based on section 6(1) and (2) of the Banking and Financial Institutions Act, No. 5 of 2002.

Mr. Mbwambo is faulting this conclusion that the law which would have been used to interpret the agreement ought to have been the Law of Contract Act, [Cap. 345 R.E 2019] particularly section 10. In my view, interpretation of the law particularly the law applicable is a legal based point which needs attention and clarification from the Court of Appeal. Therefore, I hereby certify it.

Another point which needs attention is the requirement of stamp duty to the contract. The Honorable Judge expunged exhibits which are loan agreements between parties simply because they are not stamped contrary to sections 5(1)(a) and 47(1) of the Stamp Duty Act, [Cap. 189 R.E 2002] read together with item 5(b)(ii) of the schedule thereto. Mr. Mbwambo is against this conclusion. He said, absence of stamping the stamp duty to the agreement or contract is not the ground for it to be a nullity. Again, in my settled view this is yet another point of law to be interpreted by the Court of Appeal. It is purely a point of law.

In the event therefore, the following points of law are hereby certified to be considered by the Court of Appeal for determination.

- i. Whether the law applicable in interpreting the contract entered between the applicant and the respondent ought to have been the Financial Institutions Act No. 5 of 2002 or the Law of Contract Act, [Cap. 345 R.E 2019].*
- ii. Whether it was proper to expunge the voluntary contract entered between the applicant and the respondent simply because they had not been stamped with a stamp duty and therefore not legally enforceable.*

Leave to appeal to the Court of Appeal is hereby granted. The appeal be filed within 21 days from the date this ruling is pronounced. No order as to costs. Order accordingly.



M. G. MZUNA,

JUDGE.

15/10/2021.