

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. CIVIL APPLICATION NO. 89 OF 2019

**(C/F Civil Application No. 13 of 2018 of the High Court of Tanzania at
Arusha)**

SULEIMAN NCHAMBI.....APPLICANT

VERSUS

SUNNY AUTO WORKS..... RESPONDENT

RULING

14/6/2021 & 6/8/2021

ROBERT, J:-

The Applicant, **Suleiman Nchambi**, moved this Court under Rule 45 (a) of the **Tanzania Court of Appeal Rules**, G.N No. 368 of 2009 as amended by Rule 6 of the **Tanzania Court of Appeal** (Amendment) Rules, 2017 G.N 362 of 2017 and Section 5 (1) (c) of the **Appellate Jurisdiction Act**, cap 141 R.E 2002 seeking leave to appeal to the Court of Appeal of Tanzania against the judgment of this court (Mzuna, J) in Civil Appeal No. 13 of 2018. The appeal originated from Civil Case No. 2 of 2017 at the Resident Magistrate's Court of Arusha. The application is supported by an affidavit sworn by the applicant.

application seeking leave to appeal to the Court of Appeal of Tanzania against the impugned judgment of this Court. The Respondent filed a counter affidavit to resist this application.

When this matter came up for hearing on 29/3/2021, the Applicant was represented by **Mr. Raphael Rwezahura**, learned counsel whilst the Respondent enjoyed the services of **Dr. E.E.K. Mjema**, learned counsel. The application proceeded by way of written submissions as ordered by Court at the request of parties.

Submitting in support of the application, Mr. Rwezahura submitted that, in order for an application for leave to appeal to the Court of Appeal to be granted, the Applicant has to satisfy to the court that the processes of appeal have been commenced. He referred the Court to the case of **Elisa Mosses Msaki vs Yessaya Ngatea** (1990) TLR 90. In that regard, he informed the Court that, the Applicant herein commenced the process of appeal on 26th August, 2019 by lodging a notice of appeal together with letters requesting for copies of judgment, decree and proceedings for purposes of appeal.

He submitted further that, the grant of leave to appeal to the Court of Appeal is the discretion of the Court which must be applied judiciously on the principle that the grounds of appeal raise issues of general

his decision instead of dealing with the grounds of appeal. The impugned judgment explained with proof the issue whether the claim made at the trial court had been proven, it is not a new issue.

He submitted further that, the principles considered in granting an application for leave to appeal to the Court of appeal as expounded in the case of **British Broadcasting Corporation** (supra) cited by the Applicant are not applicable in this case because what the Applicant refers to as a point of law does not qualify to be a point of law capable of enabling this Court to grant the prayer sought.

Further to that he referred the Court to the decision in the case of **Zaina Salum vs Michael Masanya Kimaro**, Civil Application No. 685 of 2018 HC (unreported) where this Court dismissed an application for leave to appeal due to the Applicant's failure to mention the points of law for certification.

Based on the argument made, he prayed for this application to be dismissed with costs for lack of merit.

In a brief rejoinder, counsel for the Applicants reiterated his argument that there is a point of law in this matter which is worth of consideration by the Court of Appeal as deposed at paragraph 8 (i) of the affidavit supporting the application.

misdirection or non direction likely to result in a failure of justice and worth consideration by the Court of Appeal....In an application of this nature, all that the Court needs to be addressed on, is whether or not the issues raised are contentious....the Court cannot look at nor decide either way on the merits or otherwise of the proposed grounds of appeal."

It was further considered in the case of **Saidi Ramadhani Mnyanga vs Abdallah Salehe** [1996] TLR 74 that, for leave to appeal to be granted, the application must demonstrate that there are serious and contentious issues of law or fact fit for consideration by the Court of Appeal of Tanzania.

It is basic that, leave to appeal to the Court of Appeal of Tanzania is granted by discretion of this Court which must be exercised judiciously, and is granted where the grounds of appeal raise issues of general importance or novel points of law or prima-facie arguable appeal (See **British Broadcasting Corporation** (supra)).

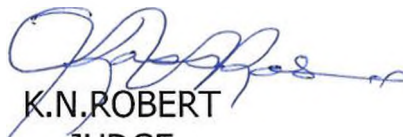
In the present case, the concern raised by the Applicant as a ground for this application is stated at paragraph 8 (i) of the supporting affidavit and it reads:

(Respondent herein) evidence as presented at the trial court. Accordingly, I find that this application brings up serious issues of misdirection or non direction likely to result in a failure of justice and worth consideration by the Court of Appeal. Consequently, I allow this application.

In the upshot, this application for leave to appeal to the Court of Appeal of Tanzania is hereby granted.

It is so ordered.




K.N. ROBERT
JUDGE
6/8/2021