

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 269/2021
(Originating from Civil Appeal No. 126 of 2019)

AMIRI JUMA.....APPLICANT
VERSUS
ASIA MOHAMED.....RESPONDENT

RULING

30/9/2021 & 17/11/2021

E.B. LUVANDA, J.

The applicant above mentioned is seeking for an order for leave to appeal to the Court of Appeal of Tanzania against the judgment and decree in the above mentioned civil appeal.

In the affidavit in support of the chamber summons, the applicant did not ground reasons upon which the application for leave is sought, in lieu of he dwelled much narrating chronological of past events culminating into this application for leave. The applicant said nothing substantial to the eventuality of his intended appeal, apart from common poem usually recite by anyone startled for lack of argument, "that the application is not prejudicial to the respondent and that the applicant will suffer more if the application is not granted".

Strictly speaking, appeal in the second appeal in particular to the apex Court is not an appeal as a matter of right unlike the first appeal. Essentially the second appeal to the apex Court is subject to fulfilment of certain condition, it is not an automatic process. In other words, the second appeal to the apex Court need approval by this Court. I am saying so, because the applicant seemingly was under a wrong impression that leave to appeal to the Court of Appeal is automatic as a matter of right.

Even in his oral submission, the appellant who was unrepresented submitted nothing material to his application apart from insisting that he is a legal heir. However, this Court ruled, I quote

'The position of inheritance according to Islamic law, is very clear that, illegitimate child has no right to inherit from his step father'

But as I have said above, in the affidavit in support of this application, the applicant did not craft or indicate the point worthy for determination by the superior Court. It is common knowledge that the second appeal lie to the Court of Appeal of Tanzania in civil matter only if this Court is satisfied that the intended appeal involve a substantial question of law or general importance which to the opinion of this Court need to be decided by the apex Court.

In the case of **Charles S. Kimambo vs Clement Leonard Kusudya (As an Administrator of the Estate of Leonard Kusudya, Deceased) and another**, Civil Application No.477/03 of 2018, Court of Appeal at Dodoma (unreported), at page 7 the apex Court cited **British Broadcasting Corporation v. Eric Sikujua Ng'maryo**, Civil Application No. 138/2004, Court of Appeal at Dar es Salaam (unreported) at pages 6 and 7, it was held, I quote

'As a matter of 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'

Herein the applicant did not indicate even the grounds for the intended appeal.

That said, this application is doomed to fail for want of grounds of intended appeal.

The application for leave is refused. I make no order for costs, as the matter is a probate.




E.B. Luvanda

Judge

17/11/2021

Date : **17.11.2021**

Coram : E.B. Luvanda, J

Applicant : present

Respondent : absent

B/C : Auleria

Court: Ruling delivered at chamber court.



E.B. Luvanda

Judge

17.11.2021