

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 459 OF 2020**

**DEUSDEDIT DATI-----APPLICANT**

***VERSUS***

**MARIAM JUMA MSANTU-----RESPONDENT**

*Date of last Order: 09/07/2021*

*Date of Ruling: 05/08/2021*

**R U L I N G**

**MGONYA, J.**

This is an Application for leave to appeal to the Court of Appeal after the Applicant being aggrieved by the Judgment of this Court in **PC Civil Appeal No. 533 of 2019** delivered 26<sup>th</sup> day of July, 2017. The Chamber Summons is supported by an Affidavit sworn by **DEUSDEDIT DATI** the Applicant herein. The Respondent filed Counter Affidavit in reply to object the prayer sought.

With the leave of this Court, the Application was disposed of by way of written submissions as both parties were representing themselves before the court.

In determining this Application, I don't intend in anyway to reproduce parties' respective written submissions, and instead, I have decided to straight determine the Application from the parties' respective submissions and in accordance to the law. Let the Parties be assured that I have read their submissions and I have taken the same into consideration.

It is the trite Law that any party who is aggrieved by the decision of the Court to have the right to Appeal to the Higher Court in the hierarchy in order to seek remedy. But this right is not automatic and is applicable **where there is a contentious issue of law and if it is fit case for further consideration by the Court of Appeal**. In the instant Application, the Applicant have come up with a single point of law stating that the same is fit for consideration by the Court of Appeal in in his Appeal if granted this Application. The said point as below:

**"The Appellate Judge determined appeal which was hopeless time bared."**

I have carefully read the averments in the Applicant's written submissions in support of the said point. Further, in examining the merits of this Application, I seek guidance from the applicable principles of Law as stated in the case of ***HARBAN HAJI MOSI AND ANOTHER VS. OMAR HILAL SEIF AND ANOTHER***

**[2001] TLR 409 at Pg. 414 -415**, where the Court of Appeal stated thus:

***"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the court the specter of unmeriting matters and to enable it to give adequate attention to cases of true public importance."***

As said earlier, I am aware that Leave to Appeal is not automatic, it is discretionary and further that the said point has to be legal. On this, I have to declare straight away that before this Court, the Applicant has failed to establish that there is a triable point of law capable of being considered by Highest Court of the Land that is the Court of Appeal. I say so since **if** it is true that the Appellate Judge had determined the Appeal which was time barred; then why the Applicant did not raise this point during pleadings, and further during hearing and allow the judgment to be delivered under those circumstances? What is the meaning of the pleadings then? To me this point was supposed to be **a point of preliminary objection** during Appeal, so as the court could

first determine it before determination of the Appeal. At that time, if the court could find that the said point had merit, then the appeal could have been either struck out or dismissed. However, that was not the case.

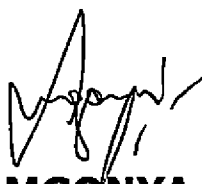
To me the instant point for determination at the Court of Appeal is a pure an **afterthought**. I still ask myself, if the Applicant herein was successful in his appeal, then could he raise this point at this stage? The answer is **NO!** Then if that is the case, this court cannot grant leave out of an afterthought point.

In the event therefore, it is my conviction that here is no any point of law advanced for the Court of Appeal to adjudicate upon the rival contentions of the parties as the point advanced by the Applicant lack merits.

Consequently, I proceed to **dismiss the Application for leave to Appeal to the Court of Appeal sought for the same is meritless.**

Respondent to have her costs.

It is so ordered.

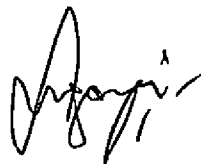


**L. E. MGONYA**

**JUDGE**

**05/08/2021**

**Court:** Ruling delivered in the presence of the Applicant and Mr. Richard, Bench Clerk and in absence of the Respondent, on 08<sup>th</sup> August, 2021 in chamber No. 22.



**L. E. MGONYA**

**JUDGE**

**05/08/2021**