

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. CIVIL APPLICATION NO. 13 OF 2019

(Arising from the High Court of Tanzania at Dodoma in PC Matrimonial Appeal No. 8 of 2018 and Matrimonial Appeal No. 1/2018 of Kondo District Court, Original Matrimonial Cause No. 5/2013 of Kondo Urban Primary Court)

HALID M.ALLY APPLICANT

VERSUS

WAPWANI.H.SOLOKA.....RESPONDENT

RULING

Date of last Order: 18.10.2021

Date of Ruling: 24.11.2021

A.J. Mambi, J.

The applicant has filed his application for the leave of this court to appeal to the Court of Appeal. The applicant has filed this application following his dissatisfaction with the decision of this court. The applicant filed a chamber summons application under section 5(2)(c) of the Appellate Jurisdiction Act, Cap 141 [R.E.2019].

The applicant prays to this court to grant certificate to enable him to appeal to the Court of Appeal against the Judgment made by this Court under Hon.Judge Masaju.

During hearing, the parties appeared unrepresented and each had nothing to add apart from stating that they rely on their documents they filed at this court and they both prayed for adoption of their affidavits. While the applicant briefly submitted that he relies on his application supported by an affidavit, the respondent briefly stated that she relies on her reply and counter-affidavit.

I have keenly perused the documents (the applicant affidavit and respondent affidavit) filed by both parties and the Judgment made by Hon.Judge Masaju. In my considered view, there is one main issue that needs to be addressed. The main issue is whether the applicant has indicated the point(s) of law that need to be discussed by the Court of Appeal if this court grants certificate.

It is clear that the Judgment which is intended to be appealed was made by this Court as second appellate Court. However, before the High Court grants leave to appeal to the Court of Appeal the applicant must clearly show the point(s) of law that were not determined by the Judge who made the decision against him.

The requirement for showing point/points of law for any party seeking for certificate from the High Court to appeal to the Court of Appeal is provided under the Appellate Jurisdiction Act, Cap 141

[R.E.2019]. This is under the section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 [R.E.2002] which provides that:

“no appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High Court certifies that a point of law is involved in the decision or order”

This was also underscored by the Court of Appeal in **NELI MANASE FOYA VS DAMIAN MLINGA, MISC.APPEAL NO.19 of 1999** at pages 2 and 3. The question to be determined by this court is whether the applicant in his application supported by affidavit indicated any point of law as required by the law. I have perused the application and affidavit by the applicant in line with judgment made by the Judge, I am satisfied that the judge was right in his decision and there is no any point of law to be determined by the Court of Appeal.

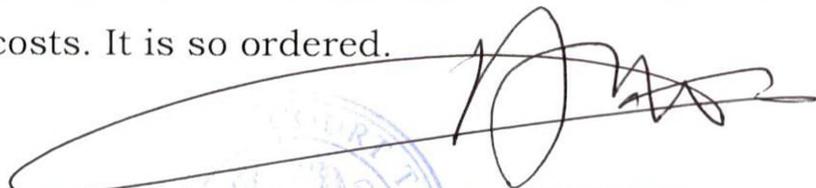
I wish to underscore that, the court has in numerous decisions held that certificate or leave to appeal to the Court of Appeal can only be granted where the proposed appeal stands reasonable chances of success and the applicant has clearly pointed out the points of law in his affidavit. I am also aware that leave or certificate on point of law to appeal is not automatic rather it is in the discretion of the court among other factors. Looking at the affidavit by the applicant, I find that the applicant has not established that there are points of law that need to be determined by the court of appeal. In this regard, there is nothing can be regarded as points of law by this

court to enable the applicant to appeal to the Court of Appeal apart from just wasting the time of the court.

Indeed the provisions of the law are very clear on what should court consider before granting certificate for one to appeal to the Court of Appeal of Tanzania against the Judgment and Orders given by this Court. It is trite law that , the High Court is required to consider application for certificate to appeal to the court of appeal where the applicant indicates that there is/are point/s of law that are involved before an appeal could be entertained by the Court of Appeal. I have perused the judgment of this Court and the application filled by the applicant, but I don't see any point of law to justify me and this court to grant certificate for the applicant to appeal to the Court of Appeal as there is no any point of law indicated by the applicant. The applicant has not indicated any point of law and sufficient reasons other than wasting time. It should also be noted that this matter which originated from Matrimonial cause at the primary court has taken a long time without any justification. My thorough perusal has revealed that the applicant has not raised any point of law related to what he has stated in his affidavit. As alluded above that leave to appeal to the Court of Appeal is not automatic, one must show the points of law to be determined and must adduce clear grounds of the intended appeal.

From what I have observed, I am constrained to hold that the application before this court is devoid of merit. I am of the considered view that entertaining this kind of application is

wastage of the time of the court and both parties. In the circumstances, I am satisfied that there is nothing can be regarded as point of law to justify the intended appeal to the Court of Appeal. In the result, I dismiss the application in its entirety. Since the parties are related, I make no orders as to costs. It is so ordered.

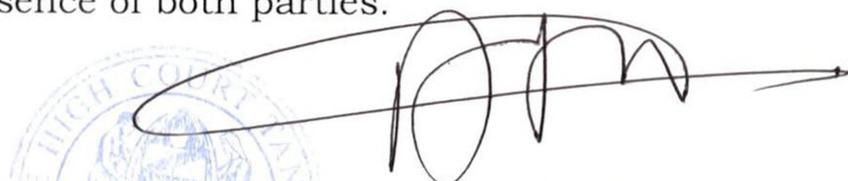


A.J. MAMBI

JUDGE

24/11/2021

Ruling delivered in Chambers this 24th day of November, 2021 in presence of both parties.



A.J. MAMBI

JUDGE

24/11/2021

Right of appeal explained.



A.J. MAMBI

JUDGE

24/11/2021