

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA

MISC CIVIL APPLICATION NO.94 OF 2021

(C/f Civil Appeal No.12 of 2020 at the High Court of Tanzania at Arusha, original Misc Application No.34 of 2018 at the Juvenile Court of Arusha Urban Primary Court)

MARKO HAULE.....APPLICANT

Vs

VERONICA LAWRENCE.....RESPONDENT

RULING

Date of last Order: 13-6-2022

Date of Ruling: 30-6-2022

B.K.PHILLIP,J

This application is made under section 5(1) (c) of the Appellate Jurisdiction Act and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009. It is supported by an affidavit sworn by the applicant. The applicant prays for the following orders;

- i) That this Honourable Court be pleased to grant leave to the applicant to appeal to the Court of Appeal of Tanzania against the whole of the Ruling and drawn order of the trial Court , Judgment and decree of the Appellate Court (High Court of Tanzania in Civil Appeal No.12 of 2020 delivered by Honourable Judge K.N.Robert on 18th November 2020.
- ii) Costs of the application be in course.

- iii) Any other reliefs /order as this Honourable Court deems fit to grant.

The applicant is represented by the learned Advocate Emmanuel Shio whereas the learned advocate Omary Gyunda appeared for the respondent. The respondent did not file any counter affidavit. When this application was called for hearing the learned advocate Ngyunda informed this Court that the respondent is not contesting the application. Thus, it is only the learned Advocate Emmanuel Shio who presented his arguments in support of the application.

Mr. Emmanuel started his submission by adopting the contents of the affidavit in support of this application and referred this Court to paragraph 9 of the same, which contains the grounds intended to be raised at the Court of Appeal; to wit;

- i) That the Honourable Appellate Judge erred both in law and fact for failure to hold that it was not legally proper for the trial Magistrate to admit the DNA report that was incompetent and improperly taken.
- ii) That the honourable Appellate Judge erred both in law and fact for failure to hold that the trial Magistrate was wrong in granting relief not sought by the respondent and wrongly relied on Rule 86(1) of the Law of the Child (Juvenile Court Procedure) Rules ,2016.
- iii) That the Honourable Appellate Judge erred both in law and fact for failure to hold that the trial Court violated the provision of

Rule 13(1) (b) of the Law of the Child (Juvenile Court Procedure) Rules , 2016.

Relying on the case of **British Broadcasting Corporation Vs Eric Sikujua Ng'maryo, Civil application No 138 of 2004** and **The School of St. Jude Ltd Vs Ramadhani Issa Shemnga , Misc Civil Application No. 119 of 2019** (Both unreported) , Mr. Emmanuel submitted that the grounds enumerated in the affidavit in support of this application are worth the attention of the Court of appeal.He implored this Court to grant this application.

The position of the law is that granting or refusing to grant leave to appeal is within the Court's discretion . However,the discretion must be exercised judiciously. In the case of **British Broadcasting Corporation** (supra) , the Court of Appeal said the following;

" As a matter of 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 of appeal show a prima facie or arguable appeal..."

Upon perusing the impugned judgment, I am satisfied that the intended grounds of appeal are worthy the attention of the Court of Appeal.

In the upshot, this application is granted. Each party will bear his/her own costs.

Dated this 30th day of June 2022




B.K.PHILLIP

JUDGE.