

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 400 OF 2015**

**BETWEEN**

(Application for Leave to Appeal against Orders and Ruling of the High Court of Tanzania Hon. E.E.KAKOLAKI J, dated July, 2021 in Civil Appeal No. 296 of 2020 Original Decision of Hon. J.LYIMO RM, in Civil Application No. 303 of 2020 of the Juvenile Court of Dar es Salaam at Kisutu,)

**SUZAN ROSE SENGA.....APPLICANT**

**VERSUS**

**MUSSA SELEMAN MBWANA.....RESPONDENT**

**RULING**

**MRUMA,J.**

The is a ruling on an application for leave to appeal to the Court of Appeal against the decision and orders of this Court (Kakolaki,J) in Civil Appeal No. 296 of 2020. The said Civil Appeal originates from RM Civil Application No. 303 of 2020 of the Juvenile Court of Dar es Salaam at Kisutu. The present application is brought under section 5(1)(a) of the

Appellate Jurisdiction Act Cap 141 RE RE 2019 and is supported by an affidavit sworn by the Applicant.

The Respondent Mussa Selemani Mbwana filed a counter. Affidavit to oppose the application.

At the hearing of this application, the Applicant appeared in person while the Respondent was represented by Ms. Jesca Masae, learned advocate. The application was argued by way of written submissions.

I have carefully gone through the submissions of the parties but with due respect to them, their respective submissions have not been geared towards the present application but rather to the would appeal in the Court of Appeal.

Section 5(1) (c) of the Appellate Jurisdiction Act [cap 141 RE 2019] under which this application is pegged provides as follows:

*“ In Civil Proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal (C) with leave of the High Court or Court of Appeal against every other decree, order, judgment, decision or finding of the High Court”.*

From the above provision of the law, a case cannot as a matter of right be appealed to the Court of Appeal. A party seeking to appeal to the

Court of Appeal from the High Court decision must file an application for leave to appeal in the High Court and if the High Court is satisfied that there is an arguable point before the highest court of the land, then it will grant leave.

The purpose of the requirement of the leave is to enable the High Court to summarize the issues involved and recommend whether or not they worth consideration by the Court of Appeal.

This check point if used judiciary if used judiciously may strink number of cases that go to the Court of Appeal without sufficient grounds.

The decision to grant or not to grant leave to appeal to the Court of Appeal is discretionary. A decision to deny leave does not necessary mean that the court agrees with the decision made by it (before another Judge), instead it simply means that the circumstances of the decision does not Warrant a review by the highest Court of the land which is alleged with other more serious issues for its determination.

In the present matter the kernel of the dispute is Respondent's biological child who following her mother's death remained in the custody of the Applicant Suzan Rose Senga, her mother's sister.

Right to have or to grow up with parents is legal right of a child as provided for under section 7 (1) and (2) of the Law of Child Act. Provided

that there is no dispute that the Respondent is the biological father of the child and there is nothing to suggest that if staying with her biological father she may suffer any harm serious abuse or will not be in her best interest, I find nothing worth consideration by the Court of Appeal. Accordingly.

I deny leave and dismiss the application for leave to appeal to that court. Let the Court of Appeal deal with issues which worth its attention.

Regarding costs, as this is a family disputes for purposes of creating harmony in the family.

I make no order as to costs. In other words each party shall bear own costs.



A handwritten signature in black ink, appearing to read "A. R. Mruma".

**A. R. Mruma**

**Judge**

**16/6/2022**

**16/6/2022**

Coram: Hon. A. R. Mruma,J

For the Applicant: Present

For the Respondent: Present and Represented by Mr. Jesca Masae for

CC: Delphina

**Court:** Ruling delivered.



A handwritten signature in black ink, appearing to be "A. R. Mruma".

A. R. Mruma

**Judge**

**16/6/2022**