IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IRINGA DISTRICT REGISTRY)

AT IRINGA

MISCELLANEOUS CIVIL APPLICATION NO. 30 OF 2020

(Originating from the Judgement in Civil Appeal No. 15 of 2019 before Honourable Matogoro J. High Court of Tanzania at Iringa)

MEXON SANGA ..... APPLICANT

VERSUS

TOTAL TANZANIA LIMITED .....RESPONDENT

RULING

Date of last order: *17/03/2022*
Date of ruling: *25/07/2022*

MLYAMBINA, J.

The Applicant aggrieved by the decision of this Court in *Civil Appeal No. 15 of 2019* which was delivered on 31st August, 2020, he filed this application for leave to appeal to the Court of Appeal of Tanzania to challenge the said decision. The application was made under *section 5 (1) (c) of the Appellate Jurisdiction Act [Cap 141 R. E. 2019]* and supported by the affidavit sworn by the Applicant.

Opposing the application, the Counsel for the Respondent one Jesse Mwamgiga lodged the counter affidavit accompanied with the point of preliminary objection which was determined in favour of the Applicant herein. Hence determination of the application on merits.

The reasons in supporting affidavit of the Applicant are to the effect that:

One, the Applicant was the Respondent in the *Civil Appeal No. 15 of 2019. Two*, on 31st August this Honourable Court delivered its judgement in respect of the afore mentioned case. *Three*, in the said Judgement this Honourable Court quashed the Judgement and Decree in *Civil Case No. 02 of 2017* and directed the matter to be heard afresh by the Resident Magistrate Court at Njombe. *Four*, the Applicant is aggrieved by the decision in *Civil Appeal No. 15 of 2019*. He is intending to appeal to the Court of Appeal of Tanzania; however, as a matter of legal procedure, he is required to seek leave to the Court in order to appeal hence this application. *Five*, there are serious question of law and fact worthy the attention and adjudication of the Court of Appeal. To that effect, the Applicant attached the intended Memorandum of Appeal.

Six, the Applicant has already applied for the copies of the Judgement, Decree, Proceedings and certified exhibit. He has well lodged a notice of appeal. *Seven*, it is therefore in the interest of meeting the ends of justice the application for leave to appeal to the Court of appeal of Tanzania succeeds. *Eight*, should this application fail or dismissed, the Applicant would greatly suffer and injustice he complains against will

remain un-addressed. *Nine*, it is fair and just for both parties that the appeal intended by the Applicant is heard and determined on its own merit. *Ten*, the interested appeal has overwhelming chances of success.

In the light of the afore prayers and reasons, the issue to be determined in this application is; *whether the Applicant raised arguable grounds and issue of general importance*. The law requires the Applicant to raise a good reason normally on point of law or issue of arguable or novel importance. The said position is reflected in *inter alia* the case of **Rutagatina C. L. v. The Advocate Committee and Another,** Civil Application No. 98 of 2010, Court of Appeal of Tanzania (unreported) where the Court stated that:

> *An application for leave is usually granted when is a good reason normally on point of law or on point of public importance that calls for the Court of appeal intervention.*

From the record, the Applicant contended that this Court quashed the decision of the trial Court and ordered the same to be tried *de novo* due to the fact that, there was a Counter Claim raised before the trial Court which was unentertained contrary to the law while there was no

Counter Claim. Thus, the Respondent, by the order of the Court, he amended his Written Statement of Defence and abandoned the same.

I went through the records of the Court and noted that at page 15 and 16 of the impugned Judgement, it is clearly explained that there was a Counter Claim raised. The Applicant did not produce any evidence as a matter of fact. The Court record shows what's transpired before the Court. The same position was stated in the case of **Halfani Sudi v. Abieza Chichili** [1996] TLR 257. The Court of Appeal of Tanzania at Dar es Salaam in **Halfani Sudi's case** held that:

> *There is always a presumption that a Court record accurately represents what happened.*

Based on the decision quoted herein above, this Court is satisfied that there was a Counter Claim raised by the Respondent herein before the trial Court. Therefore, the grounds raised by the Applicant herein are meaningless because the record transpires what happened. My brethren Matogoro, J. was therefore right to order the issue to be tried *de novo*.

Needless, the Applicant has not demonstrated to the satisfaction of this Court if there are any other points of law or of public importance that calls for intervention of the Court of Appeal by way of appeal. In

absence of such points, this Court cannot flood the Court of Appeal with appeals which are useless in the eyes of the law.

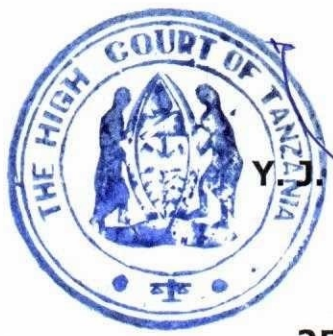
In the upshot, I hereby dismiss the application with costs for lack of merits. It is so ordered.

Y. J. MLYAMBINA

JUDGE

25/07/2022

Ruling delivered and dated 25th day of July, 2022 through Virtual Court in the presence of Erick Mhimba, Advocate for the Applicant and Lazaro Hukumu holding brief of Jesse Mwamgiga, Advocate for the Respondent. Both Advocate were stationed at the High Court of Tanzania Iringa District Registry's premises.



Y. J. MLYAMBINA

JUDGE

25/07/2022