

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

MISC. CIVIL APPLICATION NO. 03 OF 2021

(Seeking leave to appeal from the Judgment and Decree of the High Court of Tanzania, Iringa Registry before Hon. Matogolo, J in Civil Appeal No. 05 of 2020 delivered on 12th February, 2021)

UPENDO TRAVELLERS COACH APPLICANT

VERSUS

ALMAS TWAHA MSUYA RESPONDENT

RULING

Date of last Order: 22/03/2022

Date of Ruling: 25/07/2022

MLYAMBINA, J.

By chamber summons made under the provision of *section 5 (1) (c) of the Appellate Jurisdiction Act [Cap 141 R.E. 2019]*, the Applicant is seeking for the orders: *One*, this Honourable Court be pleased to grant leave for the Appellant to appeal to the Court of Appeal against the Judgement of this Court delivered by Judge Matogoro on the 12th February, 2021 in *Civil Appeal No. 05 of 2020*. *Two*, Cost of this application be provided for.

The application is supported with an affidavit sworn by the Applicant based on the following points of law as analysed under paragraph 7 of the affidavit:

- a) *Whether the High Court Judge was right to approve the decision of the trial Court and hold liable the Applicant without considering that the motor vehicle T 741 BMP which caused the accident was not belonging to her.*
- b) *Whether the High Court Judge was right to hold that the first and second Defendant before the trial Court were employee of the Applicant hence held the Applicant liable under the principle of vicarious liability without considering that the second Defendant was the owner of the material motor vehicle.*
- c) *Whether the High Court Judge acted lightly to hold that the Applicant was liable for the accident because the tickets of the particulars motor vehicle contained the name UPENDO TRAVELLERS COACH without ascertaining that the same name was not the Applicant's name.*
- d) *Whether the High Court Judge was right to establish ownership of the material motor vehicle that caused an accident through relying on a ticket, place where*

tickets obtained and on a phrase published on the sided of the bus instead on relying on motor vehicle registration card, charge sheet in the traffic case and insurance Cover Note.

- e) Whether it was proper for the High Court Judge to affirm the Judgement and Decree of the trial Court in which the Applicant was not sued properly as indicated in the register of Registrar of Companies, Certificate of Incorporation and Memorandum and Articles of Association.*
- f) Whether the first Appellate Court acted rightly for failing to evaluate properly the documentary evidence tendered and the whole evidence adduced before trial Court.*
- g) Whether the High Court Judge was right to affirm the decision of the trial Court which was premised on a summary of evidence contained in the final submission by the learned counsel for Respondent instead of Court proceedings.*
- h) Whether the High Court Judge acted rightly to skip and ignore ground 8 as contained in the*

*Memorandum of Appeal and Written Submission by
the Applicant.*

- i) Whether the High Court Judge was right to hold liable the Appellant while in the same Judgement it is indicated by the same Judge that the business name of the second defendant (Nelson Kalumika Ngaluhuwa) is Upendo traveller Coach.*
- j) Whether the Judgement of the first Appellate Court is free from contradictions and ambiguities that may occasion serious miscarriage of justice.*
- k) Whether the High Court Judge acted rightly to affirm the Judgement of the trial Court which contained extraneous facts and evidence that do not exist in the Court proceedings.*
- l) Whether the High Court acted rightly to affirm an award of both interest and general damages in absence of specific damages.*

The application was resisted through the counter affidavit sworn by Dr. Ashery Fred Utamwa, the Counsel for the Respondent.

On 16th November, 2021 when the matter came for mention, parties agreed to argue this application by way of written submission.

Both parties have no issue as to the discretion mandate of this Court to grant leave to Appeal to the Court of Appeal. There are many decisions in which the Court of law provides for the requirements for the leave to be granted, including the case of **Harban Haji and Another v. Omar Hilal Seif and Another**, [2001] TLR 409 and the case of **British Broadcasting Corporation v. Erick Sikujua Ngímaryo**, Civil Application No. 138 of 2004, Court of Appeal of Tanzania at Dar es Salaam. In the case of **Bulyanhulu Gold Mine and 2 Others v. Petrolube (T) Limited and Another**, Civil Application No. 364 of 2017, Court of Appel of Tanzania at Dar es Salaam, the Court has this to say:

Leave is not automatic, but condition on that it can only be granted where the grounds of the intended Appeal raise arguable issues in the Appeal before the Court.

Basing on the decisions quoted above I find that, the issues raised by the Applicant in his affidavit at paragraph 7 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) and (l) are not worth to be determined by Court of Appeal because no point of law or public importance which need intervention was raised.

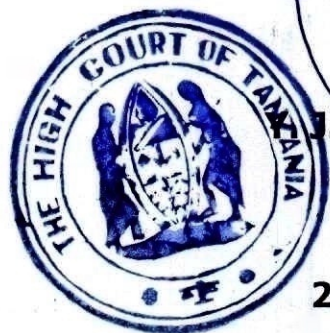
The Applicant is the owner of the motor vehicle which was involved in an accident and the motor vehicle was on the road on the Applicant's instruction. The tickets bear the Applicant business name and they were

sold at his office too. For those reasons, the High Court Judge was right to find the Applicant liable for vicarious liability. The Applicant was in possession of the motor vehicle the day the accident happened. All passengers carried the tickets which have his business name. For that reason, the Applicant can be sued through his business name as *per Order 29 Rule 10 of the Civil Procedure Code [Cap 33 R. E. 2019]*, which provides that:

Any person carrying business in a name or style other than his own name, may be sued in such name, or style as if it were a firm name; and, so far as the nature of the case will permit, all rule under this Order shall apply.

Moreover, the Applicant did not disclose the contradiction and ambiguities which he alleged to have been committed by the first Appellate Court. From the above reasons, the issues raised by the Applicant in his affidavit has not shown any point of law or arguable issues of public importance which requires the intervention of the Court of Appeal.

In the end result, the application is hereby marked dismissed with costs for lack of merits. It is so ordered.



J. MLYAMBINA

JUDGE

25/07/2022

Ruling delivered and dated 25th day of July, 2022 through Virtual Court in the presence of Mr. Mosses Ambindwile, Advocate for the Applicant and in the absence of the Respondent. The Applicant's Counsel was stationed at the High Court of Tanzania Iringa District Registry's premises. Right of Appeal fully explained.



J. MLYAMBINA

JUDGE

25/07/2022