

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

AT BUKOBIA

MISC. CIVIL APPLICATION NO. 62 OF 2021

(Arising from Misc. Civil Application No. 31 of 2020 in the High Court of Tanzania at Bukoba, originating at the District Court of Bukoba Civil case No. 10 of 1998)

CHRISOSTOME MTAHABA.....APPLICANT

VERSUS

TANZANIA MOTOR SERVICE COMPANY LIMITED..... RESPONDENT

RULING

19/04/2022 & 30/06/2022

E.L. NGIGWANA, J.

The Applicant, under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 41 R:E 2019 and section 95 of Civil Procedure Code, Cap. 33 (R:E 2019) as pegged in the chamber summons, prays for this court to grant him a leave to appeal to the Court of Appeal of Tanzania in order to impugn the decision and order of this court by Hon. A.Y. Mwenda, J dated 13th September, 2021.

Briefly, the applicant, as he deposed in his affidavit, filed Application No. 31 of 2021 in this court seeking for extension of time within which to file revision against exparte judgment of the District Court of Bukoba in Civil Case No. 10 of 1998 which was heard and pronounced exparte but the application was dismissed by this court for lack of merit after the grounds for extension of time were held not sufficient to warrant extension of time.

The efforts to effect summons to the respondent turned futile despite the substituted summons by publication in the gazette and thus the applicant finally was ordered to make a written submission *exparte*.

Submitting why he intends to appeal to the Court of appeal of Tanzania, the applicant contended that the High Court failed to consider that serving of the summons to the Applicant on the date fixed for judgment was a must and a right of the Applicant. He substantiated that there is no summons which was served to the Applicant on the date of Judgment which was contrary to the law. That this was one of the ground for extension of time to file an application for revision.

That the Applicant had a right to be notified on the date fixed for pronouncement of the *exparte* judgment. He fortified his stance by the case of **COSMAS CONSTRUCTION CO. LTD VS ARROW GARMENT LTD** [1992] TLR (CA) where it was held that;

"A party who fails to enter an appearance disables himself from participation when the proceedings are consequently ex-parte, but has to be told when the judgment is delivered so that he may if he wishes, attend to take it as a certain consequences may follows".

He further submitted that the applicant's intended appeal has over whelming chances of success which is one of the grounds for grant of the Applicant's leave to appeal to the Court of Appeal. He added that the appeal is a constitutional right. He buttressed with the case of **Joshua John Mwalugo vs Pear Ephrem Busilia**, Civil Application No. 586 of 2016.

It was the applicant's further submission that the case raises contentious and triable issues of law and thus fit case for further consideration by the Court of Appeal. He cited the case of **Nurbhai N. Rattansi vs Ministry of Water Construction Energy and Environment and Hussein Hirji** (2005) TLR 220.

He finally contended that the High court did not take into account of the said irregularities which were vital to warrant the grant of the extension of time to file revision against the judgment of the Bukoba District Court.

I have meticulously considered the applicant's submission and the records in this application. Leave to appeal to the Court of Appeal has to undergo the filtering process which is done by the High Court. The Rationale is to see which cases deserve the intervention by the Court of appeal of Tanzania.

There is a plethora of Court of Appeal and High court decisions on the matter which have explained, which I see no need citing them here.

The aim is not to step in the shoes of the Court of Appeal to discuss the merit of the decision of the High Court, the duty which is only in domain of the Court of Appeal. But rather this court must satisfy itself whether the intended appeal raises issues of law, triable issues, or disturbing features which attract the intervention of the Court of Appeal.

I am persuaded and convinced that there is a triable issue and arguable case on whether the case being determined *ex parte*, the applicant was entitled to be summoned on the date of issuing *ex parte* judgment.

In the event, the application for leave to appeal to the Court of Appeal of Tanzania is hereby granted.

No orders to costs.

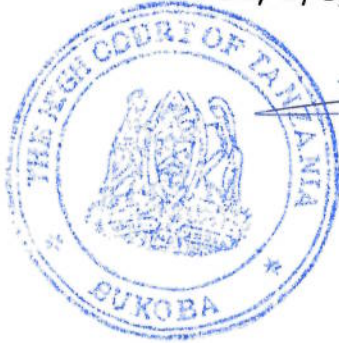



E. L. NGINGWANA

JUDGE

30.06.2022

Ruling delivered in this 30th day of June, 2022 in the presence of the applicant in person, Hon. E. M. Kamaleki, Judge's Law Assistant and Ms. Tumaini Hamidu, B/C, but in the absence of the respondent.




E. L. NGINGWANA

JUDGE

30.06.2022