

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. CIVIL APPLICATION NO. 31 OF 2021

DOTTO MACHIBYA.....APPLICANT

VERSUS

MATHIAS MACHIBYA.....1ST RESPONDENT

MASANJA MADUHU.....2ND RESPONDENT

**[Application from the Decision of High Court of Tanzania at Shinyanga
District Registry.]**

(Hon. Mdemu, J.)

dated the 14th day of July, 2021

in

Civil Appeal No. 3 of 2018

RULING

16th May & 15th July, 2022.

KULITA, J.

This is an application for leave to appeal to the Court of Appeal. It has been filed by the Applicant by way of chamber summons in terms of the provisions of sections 5(1)(c) of the Appellate Jurisdiction Act [Cap. 141 RE 2019]. In the chamber summons, the Applicant prays for this court

to grant leave for the Applicant to appeal to the Court of Appeal against the decision of this court in Civil Appeal No. 3 of 2018 delivered on the 14th day of July, 2021. The application is supported with an affidavit sworn by Constantine Ramadhan, Advocate on 11th August, 2021.

In a nut shell, the information as can be gathered from the records is that, in the District Court of Bariadi, the Applicant unsuccessfully claimed against the Respondents for compensation of Tshs. 15,000,000/= arising from tortious acts, ie. being stripped naked and beaten in the public. The acts are alleged to have been committed by the Respondents on the 12th day of October, 2013 at 16:00 hours. Aggrieved with the decision of the Bariadi District Court, the Applicant preferred an appeal at the High Court through the Civil Appeal No. 3 of 2018. Before its hearing, the High Court ordered parties to address it on, among other things, whether the Applicant's suit at the trial Court was filed within the prescribed time. Following that issue, it was found that, the Applicant's suit at the trial court was filed out of time, as thus the High Court declared it a nullity and dismissed the same.

On 23rd November, 2022 this application was scheduled for hearing through written submissions. Both parties complied with the scheduling orders. Mr. M.K.D. Mhingo, Advocate from MNM Advocate

represented the Applicant whereas Mr. Robert Masige, Advocate represented the Respondents.

Submitting in support of the application Mr. Mhingo stated that, there is a point of law that the High Court did not adequately deal with it. He went on contending that, it was wrong for the High Court to hold that, the Applicant's Civil Case No. 3 of 2017 was filed out of time, relying on the fact that the cause of action arose on 12th October, 2013. He submitted that the time for prosecuting Criminal case No. 205 of 2013 and Criminal Appeal No. 44 of 2016 in which the Applicant was the complainant and Appellant respectively, was supposed to be excluded. The Counsel observed that, had the High Court taken into consideration on that, it would have not arrived into the conclusion he had made.

He insisted that, the Applicant could have not filed Civil Case No. 3 of 2017 at this court before concluding the criminal cases on the same tortious acts. He cited the case of **Abdallah Kanjenje v. The Inspector General of Police and 2 Others, Civil Case No. 20 of 2017, Mwanza HC** to bolster his assertion.

Stressing that the Applicant's application be allowed, Mr. Mhingo stated that, the application should be granted so that the Court of Appeal can have a chance to address on the issue of computation of

time limit to file a tort case, whether it was supposed to commence on 12th October, 2013 when the tortious acts were committed, or 31st March, 2017 when the criminal cases on those tortious acts were concluded.

He added that, as appeal is a constitutional right, he prays for the Applicant's application to be granted.

As for the Respondents, their reply submission they just stated that the points of law that the Applicant has raised are controversial, hence the application should be dismissed with costs.

I have gone through the submissions of both parties, the supplied authorities and pleadings. From there the issue is to be determined is whether this application is meritorious.

The principle of law governing the grant of leave to appeal to the Court of Appeal is well settled. In a proper application, the duty of this court is just to gauge out whether there are contentious issues needing determination by the Court of Appeal.

The guiding principles are found in the Court of Appeal case namely, **Harban Haji Mosi and Another vs. Omar Hilal Seif and Another, Civil Reference No. 19 of 1997** (unreported) and in the case of **British Broadcasting Corporation vs. Erick Sikujua**

Ng'imaryo, Civil Application No. 138 of 2004 (unreported). In the former case the Court of Appeal inter alia said;

"Leave is grantable where the proposed appeal stands reasonable chances of success or where but not necessarily the proceedings as a whole reveals such disturbing feature as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the court the spectre of un-meriting matters and enable it to give adequate attention to cases of true public importance"

In the latter case the Court of Appeal, insisting on discretionary use of powers in granting leave, said;

"Needless to say, leave to appeal is not automatic. It is within the discretion of the work of the court to grant or refuse leave. The discretion should however be judiciously exercised and on the materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or novel point of law or where the grounds show a prima facie or

arguable appeal..... However, where the grounds of appeal are frivolous, vexatious, useless or hypothetical, no leave will be granted."

In the famous case of **Rutagatina C. L. vs. The Advocate Committee and Another, Civil Application No. 98 of 2020, CAT at Dar es Salaam** (unreported) both principles were quoted in approval.

From the above quoted cases, five conditions may be deducted which should be considered by the court when deciding to grant or not to grant leave to appeal to the court of appeal. The said conditions are;

- i. That the intended appeal raises issues of general importance or novel point of law;
- ii. That the grounds show a prima facie or arguable appeal;
- iii. That the grounds are not frivolous, vexatious, useless or hypothetical;
- iv. That the appeal stands reasonable chances of success; or
- v. That the proceedings reveal that there is disturbing feature(s) which require the guidance of the Court of Appeal;

The question is, does the Applicant's issue fits within the five deducted conditions for leave to be granted?

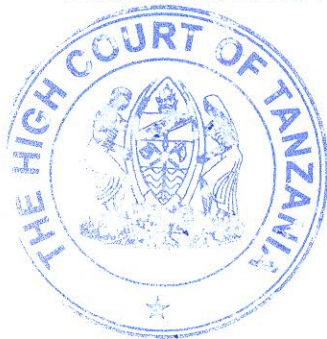
As alluded earlier, the Applicant seeks for leave to appeal to the Court of Appeal, so as to deal with the issue, as to whether, computation of time limit to file a suit on a tort of battery starts from when the tortious act was committed, or after the conclusion of the criminal cases on that tortious act.

To me, I find it that, the issue that has been raised by the Applicant complies with all the above five deducted conditions for a grant of leave to appeal to the Court of Appeal. As thus, I find the Applicant's application meritorious and I proceed to grant the same. Each party to bear its own costs.



S.M. KULITA
JUDGE
15/07/2022

DATED at **SHINYANGA** this 15th day of July, 2022.



S.M. KULITA
JUDGE
15/07/2022

