

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

MISCELLANEOUS CIVIL APPLICATION NO. 83 OF 2021

(c/f High Court of Tanzania at Arusha Civil Appeal No. 19 of 2015, originating from RM'S
Court of Arusha Civil Case No. 03 of 2012)

ANNEY ANNEY.....APPLICANT

VERSUS

TEONAS MCHAMA.....1ST RESPONDENT

SAILESHI GORDAN LAXMAN t/a

SAIBABA EXPRESS2ND RESPONDENT

RULING

16/06/2022 & 16/08/2022

GWAE

The applicant, Anney Anney has brought this application for leave to appeal to the Court of Appeal of Tanzania under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141, Revised Edition, 2019 and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009. He is desirous to pursue his appeal against the impugned judgment and decree of this court dated 9th March 2016.

This is the 2nd applicant's application for leave to appeal to the Court of Appeal of Tanzania after the validity of the former one had ceased due

to the order of the Court of Appeal striking out the applicant's appeal registered as Civil Appeal No. 178 of 2018 for being incompetent as it was found to be time barred. Subsequently to the said order striking out the appeal, the applicant had promptly and successfully filed his omnibus application for extension of time to file the requisite notice of appeal and for leave to appeal to the Court of Appeal out of time vide Miscellaneous Civil Application No. 90 of 2020.

This application is supported by the applicant's sworn affidavit whose essence is to the effect that, the intended appeal to the Court of Appeal of Tanzania has overwhelming chances of success on the ground that, the learned appellant court judge **(Moshi, J)** through Civil Appeal No. 19 of 2015 misapprehended the applicant's evidence adduced before the Court of Resident Magistrate of Arusha at Arusha (trial court) thereby occasioning miscarriage of justice.

It is also through the proposed Memorandum of Appeal where the applicant is found complaining that it was wrong for the appellate court judge to hold that, the applicant had failed to prove his case in the balance of probabilities after her finding that the 1st respondent mistreated the applicant.

This application is resisted by the 2nd respondent via a counter affidavit sworn by Mr. Mwang'enza Mapembe, the learned counsel who

stated that, the applicant's affidavit does not raise any legal point worth for consideration by the Court of Appeal.

The hearing of this application was ordered to be by way of written submission and the parties complied with the court's order by filing their submissions accordingly.

I am going to consider the parties' written submissions in the course of determining on, whether the sought leave is grantable. It is trite law that in order for the court to grant leave there must be reasonable chances of success or where proposed grounds of appeal demonstrate or requires guidance of the Court of Appeal as rightly argued by both parties (See decisions of the Court of Appeal of Tanzania in **Said Ramadhani Manyanga vs. Abdallahh Salahe** (1996) TLR 74, **Hellmina Nyoni vs. Jeremiah Magoti**, Civil Appeal No. 61 of 2020 (unreported) and **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (unreported)).

Examining the impugned judgment of this court sitting in its appellate jurisdiction, the applicant's affidavit and the proposed Memorandum of Appeal, I am satisfied that, the intended appeal is arguable by the Court of Appeal.

Similarly, I have taken into account that, initially, this court granted leave to the applicant to appeal to the Court of Appeal however his appeal

was struck out as intimated earlier compelling the applicant to re-file this application. Thus, I have no apparent reason to differ with my fellow judge who viewed the former application for leave as grantable.

In the upshot, this application for leave is merited. The applicant is now given leave to appeal to the Court of Appeal of Tanzania. Costs of this application shall abide the results of the intended appeal.

It is so ordered.




M. R. GWAE
JUDGE
16/08/2022