

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO.496 OF 2021

(Originating from Civil Reference No. 8 of 2020)

MHUNE NDAKI.....APPLICANT

Versus

HALI NGUYE.....1ST RESPONDENT

NDAMBWE RAMADHANI.....2ND RESPONDENT

Date of Last Order: 01/03/2022

Date of Ruling : 13/07/2022

R U L I N G

MH. MGONYA, J.

Before this Honourable Court is an application filed by the Applicant named herein. The Application is made under **Rule 5(1) (c) and Rule 43 of The Tanzania Court of Appeal Rules, 2009 GN. 368**. This Application was made after the Applicant being aggrieved by the decision of this Honourable Court which is **Civil Reference No. 8 of 2020** that was dismissed before this Court for not being proved and supported by the contentions in the affidavit.

The Application was supported by an affidavit that was dully signed by **Mr. Steven Kosi Maduhu** Counsel for the

Applicant. When the matter came for hearing, the Applicant enjoyed the services of Mr. Steven Maduhu Learned Counsel while the Respondents were represented by Ms. Hellena Mwanjila learned Counsel. The Court having seen the pleadings were complete in the records ordered the Application be heard by way of Written Submission. Counsel for both parties having complied to the scheduling order, this Court was the in a position to determine the instant application.

It was the Applicant's submission that, they pray to adopt what has been stated in the Affidavit from paragraph 1 to 8 as part of their written submission. Moreover, they submitted on the points which the Applicant wishes the Court of Appeal to determine as mentioned in paragraph 7 of the sworn Affidavit which they prayed also to adopt as part of their submission. It is from the written submissions the Applicant went forth in reproducing and submitting on the said reasons requiring determination. Having gone through the submissions the same will not detain me for reasons that will be stated later.

In reply the Respondents averred in their submission that, they pray to adopt all that was stated in the Counter Affidavit sworn by Counsel for the Respondents. Submitting further the Respondent avers that the submission by the Applicant is basically what has been stated in the Affidavit in support of the

Application. The Applicant has from the submission raised new grounds of which were never part of what transpired in the decision to be appealed against.

It was the Respondents submission that they ascribe to the well-established principle underlying the Application for leave to appeal to Court of appeal which requires one seeking leave to show points of law which will be basis of the appeal granted. These points of law must arise from or originate from the proceedings and pleadings which rise to the application for leave filed by the Applicant. The case of **NICO INSURANCE (T) LIMITED vs PHILIP PAILO UWOYA & 2 OTHERS** was cited to support the contention.

Having gone through the arguable submission by the Applicant and the Respondents for and against the Application. I must remind the parties' Counsel that an application for leave to appeal to the Court of Appeal is within the discretion of the Court to grant and the same is urged to be exercised judiciously. The same being in discretion of the Court has underlying principles advanced by case law. General principle for leave to appeal to the Court of appeal rests **where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a *Prima***

***facie* or arguable appeal; and where the proposed grounds of appeal stand reasonable chances of success.**

In this application the Applicant is seeking for leave to appeal to the Court of Appeal against the decision of **Civil Reference No. 8 of 2020** of this Court that was dismissed. The contention of this application is traced from the Chamber summons and paragraph 3 and 4 of the sworn Affidavit. In his submission the Applicant went further in explaining the reasons for seeking leave.

It is however, from the Applicant's submission that this Court had identified matters that were not issues in the Civil Reference before Hon. Ebrahim, J that is to say new issues were raised by the Applicant and submissions made thereto as they appear **under paragraph (i), (iii) and (iv)**. This Court observed the same to be new issues and hence refrained from entertaining them since this Court has no jurisdiction or mandate to determine matters that were never part of what transpired in the Civil Reference.

From the above explanation, I find the remaining reasons or grounds that is **paragraph (ii) and (v)** of the sworn Affidavit not amounting to be grounds that raise issues of general importance or a novel point of law for the Court of Appeal to be engaged in determining the same.

Since the records of the decision that is **Civil Refence No. No. 8 of 2020** which was dismissed is before me, I took time to go through the Ruling that has aggrieved the Applicant herein. It is from the said decision and the reasons set forth in that decision I am of the observation that the said grounds do not qualify for a grant of leave to appeal for the same were fully determined accordingly. I find it of importance to cite the case of **SAFARI MWAZEMBE vs JUMA FUNDISHA, Civil Application No. 503/06 of 2021, CAT Hon. Kihwelo J.A and WINFORD MLASHA vs DINALES PAUL MWASILE and 2 Others, Misc. Land Application No. 125 of 2017** by Hon. Utamwa. These two cases have conversed on the issue of granting leave to the Court of Appeal of which I borrow the same wisdom as to the matter before me.

In the event therefore, this application for leave to appeal to the Court of appeal is hereby dismissed with costs

It is so ordered

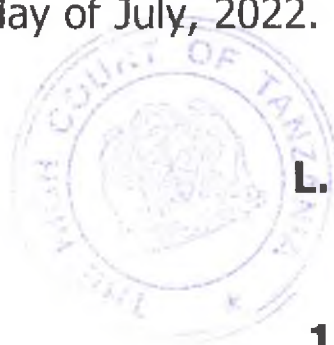


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L. E. MGONYA
JUDGE
13/07/2022

Court:

Ruling delivered before Honourable **J. Luambano Deputy Registrar** in the presence of Mr. Stevens Madulu learned Advocate, the presence of Mr. Michael Kayombo advocate for the 1st and 2nd Respondent, the presence of the 1st Respondent in person and Mr. Richard RMA on this 13th day of July, 2022.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya".

L. E. MGONYA

JUDGE

13/07/2022