

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 374 OF 2021**

**SALEHE ATHUMANI MWENDI ..... APPLICANT**

**VERSUS**

**HAWA SALEHE LUBIKI & .....1<sup>ST</sup> RESPONDENT**

**FRANK PETRO MATAYA .....2<sup>ND</sup> RESPONDENT**

*Date of last Order: 17/6/2022*

*Date of Judgement: 24/6/2022*

**RULING**

The matter before the court is an Application so as this court can be pleased to grant leave to the Applicant to appeal against the decision of **Civil Appeal No. 243 of 2019** decided on 6<sup>th</sup> July 2021 by Honorable Kamuzora, J.

However, before hearing of the Application, the 1<sup>st</sup> Respondent herein raised a Preliminary Objection on point of law that:-

***"The applicant has wrongly moved this Honorable Court by citing provisions of section 5 (2) (c) of the Appellate Jurisdiction Act CAP 141 [R.E 2019] that provides for certification on point of law involved before appealing to the Court while the application***

***before this court is for seeking orders for Leave to Appeal to the Court of Appeal.”***

In support of the point of Preliminary Objection through the written submission, the 1<sup>st</sup> Respondent submitted in lengthy the difference of application for leave to appeal to the Court of Appeal versus the Application on Certification of point of law to the point of determination to the Court of Appeal. It is the 1<sup>st</sup> Respondent's concern that, since the original matter emanated from the District court, there was no need to cite the provision which was for the certification of point of law as if the matter originated from the Primary Court; hence the law cited is in that respect, of which is section **5(2)(c)** of the Appellate Jurisdiction **Act, Cap. 141 [R.E 2019]** instead of **section 5(1)(c)** of the same Law which provides for leave to the Court of Appeal.

Responding to the above objection, it is the Applicant's view that, the error is a mere typing error rather than substantive which goes to the root of the Application.

In determining this point of objection, I would like to state that, it is this court's ambition to see that matters before it are heard on merits and not in points or matters based on technicalities. These sentiments are supported by the case of

***MBEYA RUKWA AUTOPARTS AND TRANSPORT LTD v. JESTINA MWAKYOMA, Court of Appeal of Tanzania at Mbeya, Civil Appeal No. 101 of 1998, (9.8.2001) (Ramadhani, Lubuva and Lugakingira JJA) [2003] TLR 251 C A, (MRAPATA).***

Where it was held that:

*"It does not appear to us that the omission to cite the provision under which it was brought was fatal. We say so because a notice of Preliminary Objection which, of course, falls under Rule 100, is not an application. It is simply a notice and is given just before hearing of the appeal begins.*

***Rule 100 is procedural rather than substantive. It does not confer any right upon litigants nor does it bestow any power on the Court, it merely regulates the conduct of the business of the Court. Omission to cite a Procedural rule does not bring into question the jurisdiction of the Court to hear and determine the matter before it and is therefore not fatal".***

In the upshot, I proceed to rule out that **the point of preliminary before the court is overruled and the**

**Application is ordered to be heard and determined on merits.**

It is so ordered.



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

**L. E. MGONYA**

**JUDGE**

**20/6/2022**

**COURT:** Ruling delivered in the Absence of Applicant, in the presence of Mr. Victor Kessy, Advocate for Respondent holding brief for Advocate Mangula and Mr. Richard RMA on 20<sup>th</sup> June, 2022.



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

**L. E. MGONYA**

**JUDGE**

**20/6/2022**