

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**MISC. CIVIL APPLICATION NO.11 OF 2020**

*(Arising from the decision of His lordship Kibella J dated 17/4/2018 in DC Civil Appeal No 09/2015)*

**FABIANO FRANCIS.....APPELLANT**

**VERSUS**

**EMMANUEL RWEHABULA@ KAIZA..... RESPONDENT**

**RULING**

*22<sup>nd</sup> & 24<sup>th</sup> June 2022*

**MKWIZU, J:**

Before me is an application for leave to appeal to the Court of Appeal. The genesis of the matter is not hard to find. Applicant had filed a civil case No 29 of 2013 before Kahama District Court for among other things, payment of 32,850,000 being loss of business and general damages. The suit was partly allowed. Applicant was awarded 300,000/=, the rest of his claims were dismissed for lack of proof.

The appellant was aggrieved and his appeal to this court in DC Civil Appeal No. 9 of 2015 was on 17<sup>th</sup> April 2018 dismissed for want of merit. Still offended, the appellant lodged a notice of appeal to the Court of Appeal on 16<sup>th</sup> May 2018 followed by an application for extension of time to file leave to appeal which was granted on 30<sup>th</sup> April 2020 by my brother Mkeha J, hence this application.

The application was unopposed. The application was *ex-parte* heard. This was after failure by the applicant to tress the respondent and duly effected

service through publication in one issue of Mwananchi Newspaper dated 27/5/2022 page 24.

Mr Bakari Chubwa Muheza advocate appeared for the applicant at the hearing. His submissions were brief. He first adopted his affidavits in support of the application. Citing the decision of **Simon Kabaka Daniel V Mitwa Marwa Nyanganyi** (1989) TLR 64, he added that, application for leave is a legal requirement requiring the applicant to demonstrate points of law involved on the matter for the Court of Appeal's attention. He contended further that, paragraph 3 of the supplementary affidavit in support of the application contains a list of three points of law for the Court of Appeal's determination. He invited this court to find them suitable and allow the application.

I have consciously considered the application. The Court of Appeal has consistently stated that the duty of the Court at this stage is to determine whether the proposed point (s) raise an arguable issue(s) before the Court of Appeal in the event leave is granted. See for instance **Jireyes Nestory Mutalemwa vs. Ngorogoro Conservation Area Authority**, Application No. 154 of 2016 (Unreported). This is what this Court is subjected to in this application. And to arrive in a just conclusion, the court will subject the entire application into scrutiny together with the decision sought to be appealed against to see whether the proposed issues deserved the attention of the Highest Court of the Land.

Paragraph 3 of the supplementary affidavit in support of the application raises three issues which the applicant thinks are necessary for the Court of Appeal's determination.

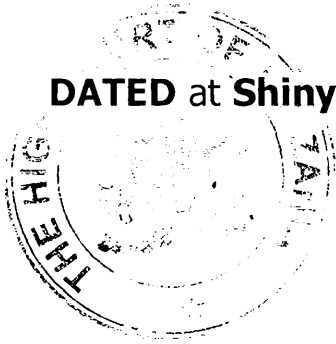
- a) In the absence of evidence of the amount of rent incurred by the appellant, both the trial court and this Honourable court erred in law for improper analysis of evidence to that effect and so reached to a wrong decision.*
- b) That the Honourable High Court having found the respondent to have breached the contract, erred in law in not awarding the appellant damages for such breach, contrary to the principles of damages*
- c) That the Honourable High court did not afford the parties the opportunity of being heard in respect of the rent alleged to have been incurred by the appellant*

I have carefully read the decision by Kibela, J (as he then was) dated 17<sup>th</sup> April 2018 and the points raised by the applicant. I find the first two points that is (a) and (b) justified for leave. The third ground is not an arguable issue raising an important point for Court of Appeals determination on the ground that this Court was in DC Appeal No 9 of 2015 invited to exercise its appellate powers by evaluating evidence already adduced at the trial Court. The applicant's third point is a blame to the High Court for failure to afford the parties an opportunity to adduce evidence in respect of rent incurred by the appellant. Had the parties aimed at clarifying the issue, they could have paraded their respective evidence during trial and not at

the appellate stage. It is for that reason, I find the third issue not properly placed for the Court of Appeal's determination.

In the upshot, the two grounds (a) and (b) are found to found suitable. Leave is therefore granted in respect of the pointed grounds only. No order as to costs.

**DATED at Shinyanga this 24<sup>th</sup> day of JUNE 2022.**



**E.Y. MKWIZU  
JUDGE  
24/06/2022**