

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

MISC. CIVIL APPLICATION NO. 10 OF 2020

(The High Court of Tanzania (PC) Civil Appeal No. 03 of 2020, emanating from District Court of Kalambo, Civil Appeal No. 09 of 2019 Originating from Matai Primary Court, Civil Case No. 66 of 2019)

ADAM CHAMBANENJEAPPLICANT

VERSUS

**DIRU UPULE SHIMBI (MWAKILISHI WA SAMAKA
MALUNGIJI).....RESPONDENT**

RULING

Date of Last Order: 25/05/2022

Date of Ruling: 13/ 07/ 2022

NDUNGURU, J

In this application, the applicant is praying to be granted leave to appeal and a certification that there are points of law worth determination by the Court of Appeal. The application is preferred under section 5 (1) (c) and 2 (c) of the Appellate Jurisdiction Act, Cap 141 RE 2019. The application is supported by the affidavit of deposed by the applicant. The respondent is opposing the application and has filed a counter affidavit deposed by Mr. Mathias Budodi, learned advocate for the respondent. The application was disposed of through written submissions.

Submitting in support of the application, the applicant prayed to adopt the affidavit sworn by Adam Chambanenje and went on stating that this court in its judgement held that the request was made by the party and granted by the trial court before the matter proceeded to be heard on merit. To his view he submitted that the procedure for representative suit was not complied with since the proceedings does not show if the request/ leave to institute the case was made and granted before the matter proceeded to be heard on merit. That the decision of this court that the request was made and granted is not reflected in the proceedings of the trial court. Thus, he prayed for this court to certify such point of law, and the application be granted.

Contesting the application, Mr. Mathias Budodi, learned advocate for the respondent, maintained that leave was sought by the respondent before trial court in Civil Case No. 66 of 2019 at Matai Primary Court and the same was granted before the matter proceeded on merit and even the names of the parties appear to read both in the proceedings and judgement as DIRU UPULE SHIMBI (MWAKILISHI WA SAMAKA MALUNGIJI). According to Mr Budodi the trial court complied with the law and accordingly allowed respondent to appear and represent SAMAKA MALUNGIJI upon being requested and granted the leave in

accordance with the provision of Rule 21 of the Magistrate Courts (Civil Procedure in Primary Courts) Rules GN. No. 310/1964 and 19/1983 read together with section 33 (2) of the Magistrates Courts Act, Cap 11 RE 2019.

Further, Mr. Budodi contended that the entire records show that the respondent sued as a representative of SAMAKA MALUNGIJI and the case of **Evarist Kajuna vs Thereza Jacob** [1973] LRT 10 cited by the applicant is distinguishable and not applicable in the circumstances of this case.

He finally prayed for the application be dismissed with costs.

I have thoroughly considered the affidavits and submissions by the parties herein. It is a position of the law that no appeal shall lie against a decision of the High Court originating from primary court unless the High Court certifies that there are legal issues worth consideration by the Court of Appeal. The leave sought by the applicant is granted where the intended grounds of appeal raise issues of general importance or novel points of law or arguable appeal. Leave cannot be granted where the grounds of appeal are frivolous, vexatious or hypothetical.

In the case of **Simon Kabaka Daniel vs Mwita Marwa Nyanganyi & 11 Others** [1989] TLR 64, it was held that;

“In application for leave to the Court of Appeal the application must demonstrate that there is a point of law involved for the attention of the Court of Appeal”

Also, in the case of **Ali Vuai Ali vs Sued Mzee Suwedi** [2004]

TLR 110, the Court stated that;

“According to section 5 (2) (c) of the Appellate Jurisdiction Act, 1979, a certificate on a point of law is required in matters originating in Primary Court; it is provided therein that an appeal against the decision or order of the High Court in matters originating in Primary Courts would not lie unless the High Court certifies that a point of law is involved in the decision or order”

In the application at hand, the applicant’s affidavit does outline the points of law to be determined by the Court of Appeal. Also, it is to be noted that the applicant stated in the chamber summons that he applies for leave and certificate that there is a point of law involved in PC. Civil Appeal No. 03 of 2020 of the High Court of Tanzania at Sumbawanga intended to be appealed against.

The applicant has raised two points that he intends to propose before the Court of Appeal which are as follows;

- a. Whether it was proper for the complainant (respondent) to institute the Civil Case No. 66 of 2019 at Matai Primary Court on its name as representative of SAMAKA MALUNGIJI without the leave of the trial court.*
- b. Whether it was proper for the high court to uphold the decision of the District Court of Kalambo which raised the issue of locus stand of applicant suo motto without according him a right to be heard.*

My careful scrutiny of the above purported points of law do not qualify to be points of law worth for consideration by the Court of Appeal. This court rightly determined those purported points of law raised by the applicant. I find that the said points of law did not meet the test provided in the case of **Ali Vuai vs Suwedi Mzee Suwedi**, and **Mohamed and Mohamed and Another vs Omar Khatibu**.

In the case of **Mohamed Mohamed and Another vs Omar Khatibu**, Civil Appeal No. 68 of 2011, Court of Appeal held that: -


"A point of law worthy being certified for our decision would be, for instance, where there is novel point, where the point sought to be certified has not been pronounced by this Court before and is significant or goes to the root of the

decision, where the Court below misinterpreted the law, etc. in this sense a mere error of law will not be a good worthy the certificate."

Therefore, the applicant has failed to demonstrate the points of law worth to be certified by this court thus, the application has no merit and hereby dismissed with costs.

It is so ordered.




D. B. NDUNGURU
JUDGE
13. 07. 2022