

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MOROGORO DISTRICT REGISTRY)

AT MOROGORO

MISC. LABOUR APPLICATION NO. 02 OF 2022

(Originating from Labour Revision No. 11/2021 of the High Court of (T), at
Morogoro)

1. BARAZA LA WADHAMINI TAYOMI
2. DR. MEZGER SECONDARY SCHOOL APPLICANTS

VERSUS

TOYIS NAFTAL SAYUMWE.....RESPONDENT

R U L I N G

11th & 26th August, 2022

CHABA, J.

In this application, the applicants are seeking leave to appeal to the Court of Appeal of Tanzania. The application is made and taken out under Section 5 (1) (c) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] (the AJA) and it is supported by an affidavit deposed by Mr. Bartalomew Lewanga Tarimo, learned counsel for the applicants. On the other hand, the respondent through the legal service of Mr. Josephat Sayi Mabula, learned counsel filed a counter affidavit resisting the application.

When the application was called on for hearing, parties agreed to dispose of the application by way of written submissions. Whereas Mr. Bartalomew Lewanga Tarimo, learned counsel entered appearance for the applicants, Mr. Josephat Sayi Mabula, the learned counsel represented the respondent. Both parties lodged their written submissions in accordance

with the court's scheduling order.

Submitting in support of the application, Mr. Tarimo prayed first to adopt the affidavit deposed by him and form part of his submission. He argued that leave to appeal to the Court of Appeal (T) can be granted where the applicant has raised a point of law or where the matter is fit for determination by the Court of Appeal (T). He referred this court to the case of **Laemthong Rice Company Ltd vs. Principal Secretary, Ministry of Finance**, [2002] T.L.R, 389 to fortify his argument. In this case, the Court of Appeal (T) held inter-alia that:

"(i) ...N/A..

(ii) .. N/A..

(iii) That, Section 5 (1) (c) of the Appellate Jurisdiction Act 1979, does not predicate the grant of leave upon the application being made, in others words it does not exclude leave being granted sou motu"

(iv) that, what is required under section 5 (1) (c) of the Act is the leave of the High Court or the Court of Appeal, it matters not how that leave is obtained but it would all depend on the circumstances of each case'

Mr. Tarimo went on submitting that since there are sufficient grounds to meet the threshold necessary to grant an order for leave to appeal to the Court of Appeal (T) which apparently can be pointed out from the proceedings and the ruling of this court as stated in paragraphs 3, 4 and 5 of the affidavit deposed by himself, the same encompasses sufficient contentious matter fit for consideration or determination by the Court of

Appeal (T) against the impugned decision. He highlighted that, the Ruling of this court did interpret that *the place of domicile and place of recruitment means the same* while the said interpretation is different from the interpretation of the Commission for Mediation and Arbitration at Morogoro as shown at page 30 & 31 of the typed copy of an award. He averred further that there was misinterpretation of section 43 (1) of the Employment and Labour Relations Act [Cap. 366 R.E. 2019].

On the other hand, Mr. Josephat Mabula objected the application. And before going any further, he prayed to adopt the respondent's counter affidavit and form part of his written submission. Mr. Mabula went on arguing that leave to appeal to the Court of Appeal (T) is not an automatic right but a discretion of the court, he cited the case of **Said Ramadhani Mnyanga vs. Abdallah Salehe**, [1996] TLR 74 and **Gaudencia Mzungu vs. IDM Mzumbe**, Civil application No 94 of 1999 to buttress his argument. He underlined that the applicants have failed to show sufficient cause or reasons to persuade this court grant the sought leave to appeal to the Court of Appeal of Tanzania. He said, the applicants mislead this court because the High Court of Tanzania (Kalunde, J.) did not interpret rather it deployed direct meaning in respect of the provisions of the law under section 43 (3) of the Employment and Labour Relation Act (supra). He stressed that, the records are clear that the respondent was solicited to work at Morogoro while he was at Katavi Region on leave as shown in exhibit C7 and C8. He prayed the court to consider his submission and dismiss the application with costs.

In rejoinder, the applicants insisted that the discretion of the court must be exercised judiciously. In an application for leave to appeal to the Court of Appeal Tanzania, the crucial issue to be considered and determined by the court in the event leave is granted, is whether there is

an arguable issue to be tried by the Court of Appeal of Tanzania. He urged the court to exercise its discretionary power and grant leave to the applicants.

As hinted above, this application has been preferred under section 5 (1) (c) of the AJA. The law stipulates that:

"5 (1) - In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal:

(c) with the leave of the High Court or of the Court of Appeal, against every other decree, order, Judgment, decision or finding of the High Court".

It is settled that leave may be granted where there is a point of law, or the intended appeal stands a good chance of success or there is a point of public importance to be determined by the Court of Appeal. There is a number of cases discussed the subject and determined by the Court insisting on exposition of sufficient reasons to warrant the Court grant leave to appeal to the Court of Appeal as envisaged by the law under section 5 (1) (c) of AJA. See: **Loyce Butto Shushu MacDougal vs. Studi Bakers Tanzania Limited and Khalid Shabani Mtwangi**, Misc. Land Case Appeal No. 220 of 2008; **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 133 of 2004 (All unreported). In the case of **Harban Haji Mosi and Another vs. Omar Hulal Seif and Another**, Civil Reference No. 19 of 1997 (Unreported) which was quoted with approval in the case of **Rutagatina C.L vs. The Advocates Committee and Clavery Mtindo Ngalapa**, Civil Application No. 98 of 2010, Our Apex Court held inter-alia that:

"Leave is granted where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the spectre of unmeriting matter and to enable it to give adequate attention to cases of true public importance."

Aggrieved by the decision of this court (Kalunde, J.) in Labour Revision No. 11/2021 of the High Court of Tanzania, at Morogoro, the applicants lodged the present application seeking leave to appeal to the Court of Appeal. They intend to challenge the decision of this court on the grounds that whether the place of domicile and the place of recruitment as indicated in paragraph 8 of the Contract for Employment (Exhibit C7) means the same, the interpretation that is different from the award issued by the Commission for Mediation and Arbitration for Morogoro dated 30th June, 2021".

In **Jireys Nestory Mutalemwa vs. Ngorongoro Conservation Area Authority**, Civil Application No. 154 of 2016, the Court of Appeal of Tanzania reiterated her legal position by stressing that:

"We are alive to the fact that the requirement to seek and be granted leave to appeal to the Court before lodging an appeal against a decree, order, judgment decision or finding of the High Court other than those outlined under section 5 (a) and (b) of the Appellate Jurisdiction Act [Cap. 141 R. E. 2002 now R.E. 2019] (the AJA) is entrenched in section 5 (1) (c) of the AJA. We acknowledge that the law does not expressly state the factors to be considered for the grant of leave to appeal to the Court.

However, it is now accepted that the conditions were, lucidly, expounded by the Court in the case of British Broadcasting Corporation vs Eric Sikujua Ng'maryo, Civil Application No. 138 of 2004 (unreported). In that case, as cited in the case of Rutagatina C. L. vs The Advocates Committee and Another, Civil Application No. 98 of 2010 (unreported), the Court stated that; "Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must, however judiciously exercised and on the materials before the court. As a matter of general principle, leave to appeal will be granted 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 (see: Buckle v. Holmes (1926) ALL £ R. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."

Placing reliance from the aforementioned precedents and upon read and carefully perused the court record and the impugned decision and having understood the nature of the dispute, it is my considered view that, the applicants have managed to advance good reasons to warrant this court exercise her discretionary power by granting leave to appeal to the Court of Appeal.

In the circumstance, I am therefore constrained to certify one point of law registered by the applicants which I find it to be a point of law worthy to be considered by the Court of Appeal of Tanzania.

Consequently, the question: *"Whether the decision by this court (Kalunde, J.) that the place of domicile and the place of recruitment as indicated in paragraph 8 of the Contract for Employment (Exhibit C7) means the same,*

the interpretation that is different from the award issued by the Commission for Mediation and Arbitration for Morogoro dated 30th June, 2021” is a point of law worthy of certification.

In the final event, this application is granted. Costs in the course. **It is so ordered:**

DATED at MOROGORO this 26th August, 2022.




M. J. CHABA

JUDGE

26/08/2022