

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOKA DISTRICT REGISTRY

AT BUKOKA

MISC. CIVIL APPLICATION NO. 65 OF 2021

(Arising from PC Civil Appeal No. 06 of 2021 of the High Court of Tanzania, Civil Appeal No.01 of 2020 of the District Court of Bukoba, Original Civil Case 279 of 2019 at Bukoba Urban Primary Court)

ABDALLAH ADADIAPPLICANT

VERSUS

ADULRAMAN DAUD..... RESPONDENT

RULING

**12/09/2022 & 07 /10/2022
E. L. NGIGWANA, J.**

This is a ruling for a certificate on points of law filed by the Applicant herein. The application has been preferred under section 5 (2) (c) of the Appellate Jurisdiction Act, [Cap 141 R.E 2019] and supported by an affidavit of the applicant. The respondent filed a counter affidavit contesting this application.

The brief facts giving raise to this application as per available records can be summarized as follows; the respondent alleged that sometimes in 2018, he entered into an agreement with the applicant Abdallah Adadi whereby the applicant agreed to sell to him a motor vehicle with Registration No. T.926 BKB make Premio at the price of **Tshs 3,850,000/=** It was further alleged that the Respondent cashed the applicant the said amount, but no motor vehicle had been handed over to him. In that premise, on 23rd day of July 2019, the Respondent sued the Applicant before Bukoba Urban Primary Court vide Civil Case No.279 of 2019 for breach of contract,

claiming a total sum of **Tshs 3850,000/=**. On the other hand, the applicant admitted that he knew the respondent and that they had had business relationship but denied the claims. After a full trial, the trial court was satisfied that the respondent had proved his case to the required standard therefore decided the matter in his favour. The Applicant was ordered to refund the sum of **Tshs 3,850,000/=** to the respondent, and pays Tshs **55,000/=** as costs of the suit to make a total sum of **Tshs.3, 905, 000/=**.

Aggrieved by the decision of the trial court, the applicant approached the District Court of Bukoba vide Civil Appeal No.1 of 2020. After hearing the parties, the said appeal was allowed with costs on the ground that, as evidence adduced in the trial court, respondent had not proved his claims to the required standard. Consequently, the judgment and orders of the trial court were quashed and set aside.

Aggrieved by the decision of the District Court, the respondent herein registered an appeal to this court to wit; (PC) Civil Appeal No. 06 of 2021. The same was heard and eventually allowed on 24/09/2021. Consequently, the judgment and orders of the 1st appellate court were quashed and set aside, and the decision of the trial court was upheld. Before allowing the appeal, quashing and set aside judgment and the orders of the 1st appellate court, this court (Mwenda J) at page 5 of the typed judgment had this to say;

"From the trial court proceedings, this court noted few things worthy note taking. One, when the appellant prayed to tender payment's schedule

agreement as exhibit A1, the respondent had no objection. His reply was in the following words and I quote:

"Sina pingamizi na mimi naomba kulipa deni kati ya Abdulrahman Dauda"

Failure of the respondent to object the admission of exhibit A1 implies he was in admission of its execution by himself. Also it is clear from the record that the respondent signed the agreement exhibit A1 voluntarily and he appended his signature. His signing of the said agreement entails he knew of its contents and that he is literate. Again, having signed exhibit A1, the respondent started effecting payments in the installments and exhibit B1 & B2 were tendered before the trial court to that effect."

The applicant was aggrieved by the decision of this court thus intends to appeal to the Court of Appeal of Tanzania, hence this application. The Notice of Appeal was lodged in the Sub-registry of the Court of Appeal at Bukoba on 12/10/ 2021.

When the application came for hearing on 12th day of September 2022, the applicant appeared in person, unrepresented while the respondent was represented by Ms. Pilly Hussein, learned advocate. The application was orally argued.

The applicant had to say apart from adopting his affidavit supporting the application upon which he asked this court to certify the points of law contained therein.

In reply, Ms. Pilly Hussein submitted that this application is baseless and unfounded as no points of law which have been proposed by the applicant for this court to assess whether they can be certified as points of law to be

determined by the Court of Appeal of Tanzania. She added that, the applicant is employing delay tactics so as not to pay the respondent the decreed amount. She made reference to paragraph 6 of the Applicant's affidavit that according to the applicant, the judgment of the trial court and the High Court were tainted with illegalities but none of them was mentioned. She added that, as a matter of law, the issue of illegality has to be apparent of the face of the record. She ended her submission that, according to the provisions of the law under which this application was brought, the applicant had a duty to propose the points of law involved which he is seeking to be certified and without those points, there is no way this application can be granted, thus prayed for its dismissal with costs.

I have carefully considered the applicant's affidavit, counter affidavit by the respondent and submissions from both sides, therefore the issue for determination is whether the applicant has been able to satisfy the court that there is a point or points of law involved which deserve to be certified to the Court of Appeal for determination.

As a general rule, the matter originating in primary courts end in the High Court. That does not however mean that there cannot be a third appeal. If a litigant wishes to appeal to the Court of Appeal, the High Court must certify that there is a point of law. This is provided for under the provisions of section 5 (2) (c) of the Appellate Jurisdiction Act, [Cap 141 R: E 2019] which provides that

"Notwithstanding the provisions of subsection (1)-

- (a) *no appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High Court certifies that a point of law is involved in the decision or order."*

The reason behind this requirement was given in the case of **Vuai Ali Vuai versus Suwedi Mzee Suwedi** [2004] TLR 110 where the Court of Appeal held that;

"The purpose of a certificate for the class of appeals originating in the primary courts was to ensure that deserving cases only reached the Court of Appeal. The exercise is therefore a screening process which would leave for the attention of the court only those matters of legal importance and public importance". See also the cases of **Eustace Kubalyenda versus Venancia Daud**, Civil Appeal No.70 of 2011 and **Elly Peter Sanya versus Ester Nelson**, Civil Application No. 3 of 2015.

From the herein above decision, we also learn that certification on point of law for appeal purpose is not automatic; the court must be satisfied that there is a point or points to be certified. The applicant is expected to point out those points in his affidavit. It is trite that in application proceedings the affidavits constitute not only the pleadings but also the evidence. Equally straight that the applicant must make out his case in his founding affidavit and that he must stand or fall by the allegations contained therein. It follows therefore that the applicant must set out sufficient facts in his founding affidavit which will entitle him to the relief sought.

In the instant application, the points of law to be certified are said to have been stated under paragraph 6 of the applicant's affidavit. The same reads;

" That, since the decision of the trial court and the 2nd appellate court was full of irregularities therefore the intended appeal has great chances of success It is therefore the concern of the Applicant that this Honourable court grants him certificate on point of law so that he can appeal to the Court of Appeal since decision of the trial court was accompanied by irregularities as pointed out on the chamber summons above which is supported by this affidavit."

Upon being served with the chamber summons, the respondent duly file a counter affidavit whereas in paragraph 5, he stated that the application is an abuse of court process and tactics put into motion by the Applicant in order to deprive the respondent enjoying fruits of the decree pronounced by the trial court and confirmed by the High Court, since there is no any point of law advanced or listed by the Applicant affidavit which is to be certified by this Court to the Court of Appeal of Tanzania.

Upon reading paragraph 6 of the Applicant's affidavit as reproduced herein above, I was prompted to look at the chamber summons to see whether there are points of law pointed out there for certification but found none. For easy reference, the same read as follows;

"The applicant shall move the court for the following orders and reliefs

- (a) That, the Hon Court be pleased to grant a leave of obtaining certificate on point of law to be determined by the Court of*

Appeal of Tanzania against the judgment of the High Court of Tanzania at Bukoba District Registry dated 24th September, 2021 in PCV Civil Appeal No.06 of 2021 and the said point of law to be determined herein below as follows;

- (i) That, the judgment of the said Bukoba Urban Primary Court and the District Court was accompanied with the irregularities which warrant the Applicant to obtain certificate on the point of law to be determined by the Court of Appeal of Tanzania*
- (ii) Any other orders and reliefs as this Honorable Court may deem fit to make."*

In the case of **Dorina N.Mkumwa versus Edwin David Hamis**, Civil Appeal No.57 of 2017 the Court of Appeal had this to say;

"It is therefore self-evident that applications for certificates of the High Court on point of law are serious applications. Therefore, when the High Court receives applications to certify point of law, we expect Rulings showing serious evaluation of the question whether what is proposed as point of law, is worth to be certified to the Court of Appeal. This Court does not expect the certifying High Court to act as uncritical conduit to allow whatsoever the intending Appellant proposes as a point of law to be perfunctorily forwarded to the Court as a point of law."

In the instant application, looking at the chamber summons, supporting affidavit and submissions by the applicant, it goes without saying that no point or points of law which have been stated or proposed by the applicant as points of law to be certified to the Court of Appeal of Tanzania. Indeed,

it is my considered view that the applicant's act of filing an application of this nature is tantamount to an abuse of court process hence intolerable; thus, I have no other option except to dismiss it as I hereby do. This application is hereby dismissed with costs.



E. L. NGIGWANA

JUDGE

07/1/0/2022

Ruling delivered this 7th day of September, 2022 in the presence of the Applicant in person, Hon. E. M. Kamaleki, Judges' Law Assistant, and Ms. Tumaini Hamidu, B/C.



E. L. NGIGWANA

JUDGE

07/10 /2022