

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 48 OF 2022

(C/F PC Civil Appeal No. 37 of 2020 at High Court of Tanzania, Arusha Registry, Civil Appeal No. 44 of 2019 at District Court of Arusha at Arusha, Originating from Civil Case No. 205 of 2019 at Arusha Urban Primary Court)

ELIREHEMA JONAS SEVERE..... APPLICANT

VERSUS

POWERGEN RENEWABLE ENERGY

LIMITED.....1ST RESPONDENT

JIMEX CO LIMITED.....2ND RESPONDENT

RULING

18/10/2022 & 26/10/2022

MWASEBA, J.

This is a ruling on an application filed by the applicant, **Elirehema Jonas Severe**, against the respondents herein. The applicant is seeking extension of time to file an application for leave to appeal to the Court of Appeal of Tanzania (CAT) against the Judgment of this court dated 30th

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August 2021 (the impugned judgment) in PC Civil Appeal No. 37 of 2020.

The applicant also prayed for costs of this application to be provided for.

The application was preferred under **Section 11(1) of the Appellate Jurisdiction Act**, Cap 141 R.E 2019. It was supported by an affidavit sworn by the applicant himself. The respondent objected the application by filing their counter affidavits.

Prior to the hearing of the application, the counsel for the respondents raised one point of preliminary objection, to wit:

1. That, the applicant's application before this Hon. Court is misconceived and incompetent after being granted Certificate on point of law on 12th April, 2022.

When the matter was called for hearing of the raised PO on 18/10/2022, Mr Lobulu Osujaki represented the applicant whereas Ms Anna Ngoty, represented the respondents. The application was argued orally.

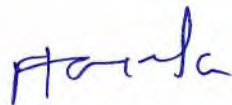
Mr Osujaki learned counsel for the applicant conceded to the raised preliminary objection and stated that after doing a research he came across a recent decision of the Court of Appeal in **Mathew Mlay Vs Rashid Majid Kasenga**, Civil Application No. 354/17 of 2020 which states that once a certificate has been issued there is no need to apply



for leave. That's why he decided to concede to the raised preliminary objection and prayed for the mercy of this court to strike out the matter with no order as to costs.

On his side, the respondent's counsel told the court that this position was there since 2020 in the decision of **Fatuma Said vs Juma Abinala and Another**, Misc. Civil Application No. 17 of 2019 delivered on 11/06/ 2020 and the case of **Beatrice Seriro and 2 Others vs Raphael Sariro**, Misc. Civil Application No. 35 of 2021 where the court cited with approval the case of **Abdallah Matata vs Raphael Mwaja**, Criminal Appeal No. 191 of 2013. In those cases, the court decided that after obtaining certificate on point of law an application for leave became misconceived. She submitted further that failure of the learned counsel for the applicant to conduct a thorough research did not prevent the respondents from incurring costs.

In his brief rejoinder the counsel for the applicant insisted the court to struck out the application without costs as it is within the discretion of the court to or not to grant costs since advocate is a human being too and can make mistakes sometimes.




Having considered the rival submissions made by the parties herein and the authorities cited, the pertinent issue for determination is whether the respondent is entitled to the costs of this case after being struck out.

Generally, costs of the case are granted at the discretion of the court. But the same must be exercised judiciously. This was well stated in the case of **Mohamed Salmini Vs Jumanne Omary Mapesa**, Civil Application No. 04 of 2014 CAT at Dodoma (unreported), where it was held that:

"It is a general rule, costs are awarded at the discretion of the court. But the discretion is judicial and has to be exercised upon established principles, and not arbitrarily or capriciously. One of the established principles is that, costs would usually follow the event, unless there are reasonable grounds for depriving a successful party of his costs. A successful party could lose his costs if the said costs were incurred improperly or without reasonable cause, or by the misconduct of the party or his advocate."

See also the case of **Registered Trustee of the Roman Catholic Archdiocese of Dar es Salaam Vs Sophia Kamani**, Civil Appeal No. 158 of 2015 CAT at Dare es Salaam (unreported).

In our present application the applicant conceded to the raised preliminary objection and prayed for the court not to award costs to the respondents,



the situation could have been different if the applicant could have withdrawn the application prior to the raised objection.


It goes without saying that the respondents herein did engage an advocate, they filed counter affidavit and filed a notice of preliminary objection and incurred other costs like transportation to attend before the court to oppose the application. For the said reasons they are entitled to be awarded costs to compensate them for expenses they incurred in determination of the case.

For the foregone reasons, the application is hereby struck out for being misconceived. The respondent has to bear the costs.

Ordered accordingly.

DATED at ARUSHA this 26th day of October, 2022.




N.R. MWASEBA

JUDGE

26/10/2022