

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA

MISC. Civil APPLICATION NO.37 OF 2022

*(Originating from the DC Civil Appeal No.4/2014, the High Court of Tanzania at
Dodoma in Land Appeal No. 9 of 2019)*

DODOMA MUNICIPAL COUNCIL..... APPLICANT

Versus

ALLY KAPAYA AND 5 OTHERSRESPONDENTS

RULING

Date of last Order 03.11.2022

Date of Ruling: 03.11.2022

Mambi, J.

The applicant filed this application for leave to appeal to the Court of Appeal. The applicant filed a chamber summons under Section 5(1) of the Appellate Jurisdiction Act, Cap 141[R:E 2019] supported by its affidavit. The applicant prays to this court to grant leave to enable it to file Notice of appeal to the Court of Appeal against the decision made by this Court. During hearing, the applicant appeared under



the services of Ms. Flora, City Solicitor while the respondents did not appear. Indeed the respondents have never appeared since the matter was filed albeit various summonses served on them. The applicant prayed to proceed *exparte* and this court proceeded to determine the matter in the absence of the respondents.

The learned State Attorney (City Solicitor) briefly submitted that she prays to adopt an affidavit. The applicant City Solicitor argued that there are matters that need to be determined by the Court of Appeal.

I have keenly perused the documents and considered ~~brief~~ the brief submission made by the applicant including an affidavit. The main issue in my considered view is, whether the applicant has advanced clear points of law and grounds to warrant this court to grant leave to file notice to appeal to the court of Appeal. It is the settled position of the law that for the court to consider an application for leave to file notice of appeal and leave to appeal to the Court of Appeal, there must be point/s of law to be determined. It is also trite law that grant of leave or certificate to appeal to the Court of Appeal is a discretionary power of the court.

The law on this point is very clear on what should the court consider before granting leave to appeal to the Court of Appeal of Tanzania against the judgment and orders given by this Court as I alluded above. It is clear that the decision which is intended to be appealed was made by this Court. However, before the High Court grants leave to appeal to the Court of Appeal the applicant must clearly show the points of laws that were not determined by the judge who made the decision against him.


The requirement for showing point/points of law for any party who seeks leave from the High Court to appeal to the Court of Appeal is provided under the Appellate Jurisdiction Act, Cap 141 [R.E.2019]. This is under the section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 [R.E.2002] which provides that:

*“no appeal shall lie against any decision or order of the High Court in any proceedings unless the High Court certifies that a **point of law** is involved in the decision or order”*

The question is, did the applicant indicated any point of law as required by the law.? I have perused the affidavit by the applicant and observed that the applicant has points of law that needs to be determined by the Court of Appeal. This court has in numerous decisions held that certificate or leave to appeal to the Court of Appeal can only be granted where the applicant has clearly pointed out the points of law in his affidavit. I am also aware that leave to appeal is not automatic rather it is discretionary. Looking at the ~~the~~ affidavit by the applicant especially paragraphs 3, 4 and 5, I find that the applicant has established that there are points of law that need to be determined by the Court of Appeal.


In light of what I have observed and reasoned, I find it proper the applicant to be granted leave to appeal to the Court of Appeal as prayed. In the result, I grant the application as prayed. The applicant shall file an appeal to the Court of Appeal within the time prescribed by the law from this date. I make no orders as to costs. It is so ordered.




MAMBI
JUDGE
03/11/2022


Ruling delivered in Chambers this 03rd day of November 2022 in presence of both parties.




MAMBI
JUDGE
03/11/2022

Right of appeal explained.




MAMBI
JUDGE
03/11/2022