

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISC. CIVIL APPLICATION NO 66 OF 2021

*(C/f High Court of Arusha Civil Appeal No. 13 of 2019 originating from the Resident
Magistrate Court of Arusha at Civil Case N 63 of 2017)*

**VETERINARY SERVICE PROFESSIONALS LTDAPPLICANT
VERSUS
GIFT JOSHUA T/a NOVUS ATTORNEY RESPONDENT**

RULING

13/09/2022 & 15/11/2022

KAMUZORA, J.

The Applicant has brought this application under Rule 45 (a) of the Court of Appeal Rules 2009 as amended by Rule 6 of the Court of Appeal (Amendments) Rules 2017 GN No. 362/2017 and Section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141 R. E 2002 seeking leave to appeal against the decision of this court in Civil Appeal No. 13 of 2019 whose decision was pronounced on 13/08/2021. The application is supported by an affidavit sworn by Giuseppe Di Giulio, the Managing Director of the Applicant. The application is contested through a counter affidavit sworn by Gift Joshua, the Respondent herein.

As a matter of legal representation, the Applicant was dully represented by Mr. John Mseu while the Respondent enjoyed the

services of Mr. Alex Yunga both learned advocates. Hearing of the application was by way of written submissions and both parties filed their submissions as scheduled save for the Applicant's rejoinder submission.

The brief facts leading to this current application as may easily be gathered from the record is such that, before the Resident Magistrate Court of Arusha (trial court) the Applicant sued the Respondent claiming for compensation of Tshs. 55,723,817/= for breach of contract in relation to Provision of legal services that was entered between the parties, general damages and costs of the suit. The Respondent raised a counter claim of Tshs 60,000,000/= claiming for unpaid legal services he rendered to the Applicant. Before the trial court both the main suit and the counter claim were dismissed for lack of proof and on appeal to this court that was lodged by the Applicant, this court dismissed the appeal and awarded costs to the Respondent. Dissatisfied by the decision of this court the Applicant desires to appeal to the Court of Appeal hence this application seeking for leave to appeal as required by the law.

Arguing in support of application, the counsel for the Applicant submitted that, the ground for the determination by the Court of Appeal

is whether the learned judge erred in law in holding that Applicant had no right to the remedies sought as a result of breach of contract by the Respondent. That, the law under section 5(1) (c) of the Appellate Jurisdiction Act does not provide for the conditions to be considered by the Court in granting an application for leave to appeal to the Court of Appeal but those conditions are laid down by case laws referring the case of **British Broadcasting Cooperation vs. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004 CAT.

Pointing at paragraph 5 of the Applicant's affidavit, it is the Applicant's submission that there is a legal point which needs the determination of the Court of Appeal as both this court and the trial court were wrong to hold that the Applicant did not prove his case while he established that there was a breach of contract. The Applicant prays that the application be granted with costs.

Contesting the application, counsel for the Respondent submitted that the Applicant raised only one ground of appeal to the Court of Appeal and looking at the wordings of the intended ground of appeal, there is no genuine appealable ground to warrant this court to grant the leave sought by the Applicant. Referring the case of **British Broadcasting Cooperation** (supra) cited by the Applicant, the

Respondent submitted that the said case laid foundation on deciding application for leave to appeal. That, the Applicant has not established a good point of law to make this court grant leave to appeal to the Court of Appeal and to allow the same is to allow unwarranted cases to reach to the Court of Appeal. The Respondent prays that the application be dismissed with costs.

I have considered the affidavit in support of application, the counter affidavit opposing the application and the relevant laws. Under section 5(l)(c) of the Appellate Jurisdiction Act, Cap 141 RE 2019, an appeal against every other decree, order, judgment, decision or finding of the High Court lie to the Court of Appeal with the leave of the High Court or of the Court of Appeal. It is however the settled principle that an application for leave to appeal to the Court of Appeal is not automatic. It may only be granted where there is sufficient cause. There is plethora of authorities that has insisted on the sufficient cause for leave to appeal to the Court of Appeal. See cases of **Loyce Butto Shushu MacDougal Vs. Studi Bakers Tanzania Limited** and **Khalid Shabani Mtwangi**, Misc. Land Case Appeal No. 220 of 2008. 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 **Rugatina C.L Vs. The Advocates Committee and Clavery Mtindo Ngalapa**, Civil Application No. 98 of 2010, the Court of Appeal held 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.

The same principle was applied in the case of **British Broadcasting Corporation** (Supra). The court held that;

".....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 ER Rep. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."

I understand that it is within the discretion of the Court to grant or refuse to grant leave, however, it is also the settled principle under the above case that such discretion must be judiciously exercised in considering the facts before the Court. As well pointed out in the above case, leave to appeal will be granted where the grounds of appeal raise

issue of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal.

In the present application, the Applicant deponed in his affidavit under paragraph 5 that he has good grounds of appeal as indicated in the intended memorandum of appeal. Reading the said annexed intended memorandum of appeal the Applicant stated that the first appellate court erred in law and in fact when it failed to consider the legal issue that the appellant was entitled remedies that there was breach of contract by the Respondent. The Applicant intends to appeal to the Court of Appeal against such decision and he believes that he proved to the first appellate court as to the existence of contract and breach of contract. To him, that raises an arguable appeal before the Court of Appeal.

I agree with the Applicant that the intended ground of appeal raised in the intended memorandum of appeal to raise issue of general importance which need to be determined by the Court of Appeal. The point on whether there existed contract and breach of the same that could entitle someone to certain relief cannot be considered as frivolous, vexatious or useless point. Much as Applicant believe that he was entitled to the remedies sought on account of breach of contract

between the parties, this matter needs determination by the Court of Appeal.

I therefore find merits in this application and proceed to grant the same. The Applicant is granted leave to appeal to the Court of Appeal as prayed and the appeal should be filed within 30 days from the date of this ruling. No orders as to costs.

DATED at **ARUSHA** this 15th day of November, 2022




D.C. KAMUZORA

JUDGE