

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(BUKOBA DISTRICT REGISTRY)**

**AT BUKOBA**

**MISC. CIVIL APPLICATION NO. 04 OF 2021**

*(Arising from Civil Appeal No. 17 of 2018 in the High Court at Bukoba and Originating from Civil Case No. 06 of 2017 in Bukoba Resident Magistrate's Court)*

**DEUS ALPHONCE MZURI.....APPLICANT**

**VERSUS**

**CRDB BANK PLC.....RESPONDENT**

**RULING**

**Date of Last Order: 21/03/2022**

**Date of Ruling: 01/04/2022**

**A.E. Mwipopo, J.**

This is application for leave to appeal to the Court of Appeal against the decision of this Court dated 18<sup>th</sup> December, 2020 in the HC Civil Appeal No. 17 of 2018. The applicant namely Deus Alphonc Mzuri filed the present application praying for the Court to grant leave to appeal to the Court of Appeal against the judgment and decree of this Court in the above cited case. The application is made by Chamber Summons supported by Affidavit of Lameck John Erasto, Advocate for the Applicant. On the other hand, the Respondent namely CRDB Bank PLC opposed the application through Counter Affidavit of Prosper Mwangamila, Principle Officer of the respondent.

On the hearing date both parties were represented. The applicant was represented by Mr. Lameck John Erasto, Advocate, whereas, the respondent was represented by Mr. Godfrey Goyayi, Advocate.

The Counsel for the applicant submitted on all grounds of the intended appeal to the Court of Appeal together for the reason that they are interrelated. He said that the evidence available in record proved that there are 4 cheques worth Tshs. 39,600,000/= which were deposited in applicants account. The applicant did inquiry to the bank to see if the said amount of money in the cheque was deposited in his account and his balance did show he has in his account more than Tshs. 40 Million. The inquiry balance slip was tendered as exhibit. The applicant even tendered a bank slip proving 4 cheques each worth Tshs. 9.9 Million were deposited in his account. This proved that the respondent assured the applicant the money has been deposited in his account as a result the applicant decided to continue to do business with one person known as Jonathan by handling the beans to him. Later on the applicant found that the said amount which was deposited in his account was withdrawn for the reason that it was blocked. The trial Resident Magistrate's Court was satisfied that the respondent had duty to pay for the money as he assured the applicant that the money was deposited in his account hence the applicant delivered the beans to one Jonathan. The trial court

awarded compensation for the amount withdrawn from the applicant account together with Tshs. 10 Million as damages.

This Court on appeal reversed the decision of the trial court on reason that the applicant was negligent. This is the reason for the applicant to apply for leave to appeal to the Court of Appeal as the duty of the respondent as the banker of the applicant has caused applicant to suffer the loss. The grounds of intended appeal has point of public interest as it was stated in **Rutagine C.L. v. The Advocate Committee and Another**, Civil Application No. 78 of 2010, CAT at Dar Es Salaam, (unreported), at page 5. The counsel also cited in support of his submission the case of **Dukyiya v. Standard Bank of South Africa Ltd [1959] E.A.** at page 958 where it was held that the duty of the bank is not to misinform its client of the state of his account.

In his response, the counsel for the respondent was against the application. He said that an application for leave to appeal to the Court of Appeal has to fulfil certain conditions. Among the condition is the presence of good reason on point of law and there has to be prima facie case or arguable appeal as it was stated in the case of **Rutagatina C.L v. Advocates Committee** (supra). In the application at hand the applicant has narrated what transpired in trial and 1<sup>st</sup> appellate court. There is nothing advanced by the counsel for the applicant to show that there is a good reason for the court to grant leave. The applicant counsel submitted the

appeal instead of this application for leave. The High Court discussed and analysed on appeal all of what was stated by the applicant before the court decided to revise the decision of the trial court.

On the issue of the duty of the bank to inform the client the truth about his account, he said that the High Court at page 7 of the judgment shows that the applicant was informed by the respondent. There is no good reason on point of law which was advanced by the applicant. The applicant centred his argument on point of facts only.

In his brief rejoinder, the counsel for the applicant said that there is point of law in this application which is the breach of duty of the banker to its clients. Then, he retaliated his submission in chief.

It is a settled law that the Court has discretion to grant or refuse application for leave. The leave is granted where the applicant has provided good reason. In **Rutagatina C.L. V. The Advocates Committee and Another**, Civil Application No. 98 of 2010, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), the Court held that:-

*"An application for leave is usually granted if there is good reason, normally on appoint of law or a point of public importance that calls for Court's intervention."*

In the case of **British Broadcasting Corporation V. Eric Sikujua Ng'maryo, Civil; Application No. 138 of 2004, CAT at Dar Es Salaam**, (unreported), the Court of Appeal held that 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. Leave will not be granted where the grounds of appeal are frivolous, vexatious or useless or hypothetical. See also **Rutagatina C.L. V. The Advocates Committee and Another**, (Supra); and **Joseph Ndyamukama V. NIC Bank and 2 Others, Misc. Land Application No. 10 of 2014, High Court, Mwanza District Registry at Mwanza** (unreported), at page 3.

In the present application, the affidavit in support of the application shows that the applicant has already filed Notice of Appeal and has applied for the copies of judgment, decree and record of proceedings including all exhibits tendered in trial Court. The applicant also attached in the affidavit three grounds of the intended appeal as follows hereunder:-

- 1. Whether the first appellate Court was justified to hold that the respondent was not liable to reimburse the applicant the total of Tshs. 39,600,000/= after the confirming the said amount have been deposited into his account upon making enquiries.*

2. *Whether the applicant was negligent as it was held by the appellate Court even after having found the entry of the deposited amount on the Bank Account Statement after he had applied for its perusal for ascertainment.*
3. *Whether the respondent was not negligent in presenting the applicant that the amount of the money to the tune of Tshs. 39,600,000/= had been deposited on his account with the result delivering the consignment to the purchaser.*

The above mentioned points to be referred to the Court of Appeal which the applicant deliberated them together as they are interrelated appears to be arguable. The points are not frivolous, vexatious or useless. These points raises issues of law and facts which need to be determined by the Court of Appeal as the applicant explained in his submission. The decision originating from District Court and Resident Magistrate's Court is appealable to the Court of appeal on both points of facts and points of law and not on point of law only as it was said by the counsel for the respondent. The point of law available is the duty of the Banker and the client in their relationship.

For that reason, the application is allowed. The leave to appeal to the Court of appeal is granted as sought. Each party to take care of its own cost.

It is so ordered accordingly.



A. E. Mwipopo

**Judge**

01/04/2022

The ruling was delivered today, this 01.04.2022 in chamber under the seal of this court in the presence of the Applicant, counsel for the Respondent.



A. E. Mwipopo

**Judge**

01/04/2022