

THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MTWARA)  
AT MTWARA

MISCELLANEOUS CIVIL APPLICATION NO.13 OF 2021

*(Arising from the decision of the High Court of Tanzania at Mtwara in DC. Civil Appeal No. 13 of 2019. Originating from Civil Case No.5 of 2017 in the District Court of Masasi at Masasi)*

**MKARAMANI AMCOSS..... APPLICANT**

**VERSUS**

**SAID ABDALLAH AND 3 OTHERS.....RESPONDENTS**

*Date of last order: 28/03/2022*

*Date of Ruling: 27/05/2022*

**RULING**

**MURUKE, J.**

Applicant filed application for leave to appeal to the Court of Appeal against decision of this court dated 25<sup>th</sup> March 2021 in DC. Civil Appeal No. 13 of 2019. The application has been preferred under section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141 RE 2019. The application is supported by an affidavit of Robert K. Dadaya, Counsel for the applicant. On the hearing of this application, both parties asked this court to adopt their his affidavits in for and against the application as submission in chief. Prayer that was granted by the court.



Grounds for application are provided at paragraph 6(i)(ii)(iii) to (iv) of the affidavit. Among of the grounds stated by the applicant is whether the first Appellate Court was correct in holding that Trial Court had pecuniary jurisdiction to entertain the suit on the ground that the Magistrates' Court Act provides maximum pecuniary jurisdiction only and not minimum. Respondents filed joints counter affidavit to refuse contents of applicant affidavit.

I have carefully considered both applicant and respondents counter affidavit. **At this juncture**, I wish to reiterate on a general principle that whether to grant or refuse leave to appeal is on discretion of the court, judiciously exercised upon showing that the proceedings as a whole reveal such disturbing features that call for intervention of the Court of Appeal. The underlying principle was stated by the Court of Appeal in the case of **Rutagatina C.L Vs. The Advocate Committee & Another, Civil Application No. 98 of 2010**(unreported) quoting with authority the case of **British Broadcasting Corporation Vs. Erick SikujuaNg'maryo, Civil Application No. 133 of 2004** (unreported) where it was stated as follows: -

*'Needless to say, leave to appeal is not automatic. It is within the discretion of the Court to Grant or refuse leave. The discretion must, however be judiciously exercised on the materials before the court. The discretion must, however be judiciously exercised on the materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues 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.'*



The essence of leave is to ensure that the court of Appeal is saved from the mirage of unmeritorious matters and wisely concentrate on matters of public importance, law and or contentious issues that need guidance of the Court of Appeal. I have gone through the affidavit filed by the counsel for the applicant. Applicant is complaining that, the trial court entertained the matter without having pecuniary jurisdiction and the first appellate court was not correct in law in holding that the appellate court do not reverse on arguments that was not presented in lower court even if that issue is a pure point of law. In the case of **Nurbhai N. Rattansi Vs. Minister of Water Construction Energy Land and Environment and Hussein RajabaliHirji [2005] TLR 223** it was held that;

*"Leave to appeal is grantable where the matter raises serious contentious issues of law and it is fit for further consideration by the Court of Appeal."*

I have carefully reviewed the trial court proceedings, and first appellate court proceedings. At page 2 of trial court proceeding reads as follows: -

..... The defendant had engaged an advocate Myovela RCIC who came with a written statement of defense containing two grounds of preliminary objection-

1. That the plaint filed by the plaintiffs is miserably defective.
2. That this honorable court has no jurisdiction to entertain and try this suit.

Unfortunately, when the case came for hearing counsel for the defendant withdrawn the preliminary objections and prayed to proceed with hearing of the main case as reflected at page 3 of the trial court typed proceeding, that reads:-



*"Mr. Myovela the learned counsel for the defendant prayed before this court to withdraw all two grounds of preliminary objection the prayer of which court granted and continue to hear the main case on merits."*

The above paragraphs, implies that, the defendant noticed at the very stage that the trial court had no jurisdiction to entertain the case before it. But for his unknown reasons, opted to withdraw the preliminary objection prayed the court to proceed determining the main case. To my opinion, if counsel for the defendant could allow the trial court to determine the said preliminary objection at that stage, the issue of whether the trial court had jurisdiction to entertain the matter could easily resolved without even appealing to the first appellate court(High Court). More so, the trial court could have been in a position even to clarify on whether the Magistrate Court Act provided the maximum pecuniary jurisdiction only not minimum or both. In the case of **Augustino Elias Mdachi & 2 others Vs. Ramadhan OmaryNgaleba, Misc. Civil Application No. 315 of 2019**(unreported) HCRT, Dar es salaam registry. It was stated that;

*"Again, as stated by various mentioned cases above that leave to appeal is grantable where the matter where the matter raises serious contentious issues of law and it is fit for further consideration by the Court of Appeal."*

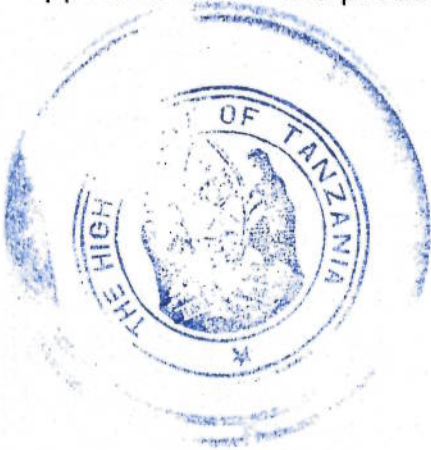
Since the applicant withdrawn himself the preliminary objection through their advocate Mr. Myovella and the issue of jurisdiction can be determined by the trial court, I find that this is one of the applications which is unfit for consideration by the Court of Appeal. Applicant have not managed to establish sufficient prima facie grounds or show any disturbing feature that call for the attention of the Court of Appeal to warrant this court to exercise its judicial discretion to grant leave. Accordingly, I dismiss this application with costs.

**Z.G. Muruke**

**Judge**

**27/05/2022**

Ruling delivered in the presence of Robert Dadaya counsel for the applicant and in the presence of first respondent Mr. Said Abdallah.



**Z.G. Muruke**

**Judge**

**27/05/2022**