

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

MISC. CIVIL APPLICATION NO. 70 OF 2021
(Originating from High Court Misc. Civil Cause No. 3 of 2020)

M/S HODI (HOTEL MANAGEMENT COMPANY LIMITED) APPLICANT

VERSUS

M/S SANDU PLUMBERS LIMITED.....RESPONDENT

RULING

23/05/2022 & 23/05/2022

KAMUZORA, J.

This is an application for leave to appeal to the Court of Appeal preferred under the provision of section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141 RE 2018, Sections 70 (4) and 91 (2) of the Arbitration Act, 2020 and section 95 of the Civil Procedure Code Cap 33 RE 2019.

As a matter of legal representation, Mr. Rogers Mlacha appeared for the Applicant while Mr. Abdallah Ally appeared for the Respondent but no counted affidavit was filed for the Respondent. When the matter was called in court, the counsel for the Respondent informed this court that the Respondent did not intended to contest the application.

I have considered the application and the affidavit filed in support of application and the relevant laws. Under section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141 RE 2018, 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. Despite the fact that the application is uncontested, this court before granting the Applicant is to ensure that the Applicant has satisfied the legal requirement for the grant of leave.

In the application for leave to appeal to the Court of Appeal, the law is settled. Leave is not automatic and may be granted where there is a point of law, or the intended appeal stands a good chance of success or there is a point of public importance to be determined by the Court of Appeal. The fact that the application is uncontested is immaterial if the conditions are not met.

There are plethora of authorities that has insisted on the sufficient cause for leave to appeal to the Court of Appeal. See, the cases of **Loyce Butto Shushu MacDougal v. 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 v. Omar Hulal Seif and another**, Civil Reference No. 19 of 1997 (unreported) which was quoted with approval in the case of **Rugatina C.L v. 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 v. Eric Sikujua Ng'amaryo**, Civil Application No. 133 of 2004 (unreported).

While it is clear that it is within the discretion of the Court to grant or refuse to grant leave, such discretion must however be judiciously exercised in considering the facts before the Court. As a matter of general principle, 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 that, the Respondent petitioned in Misc. Civil Cause No. 3 of 2020 for this court to set aside the arbitration award and order for selection of a new arbitrator. The decision of this court was in favour of the Respondent and the court did set aside the award of the arbitrator and ordered the matter to be re-arbitrated by another arbitrator duly selected by the parties. That,

the Applicant intends to appeal against that decision to the Court of Appeal and believes that the intended appeal to the Court of Appeal stands chances of success. For the Applicant, the Honourable court erred both in law and fact in holding that the arbitrator had no jurisdiction to entertain the arbitration proceedings and that the foreign lawyers were not legally competent to represent the Respondent in the arbitration.

The intended grounds of appeal were not attached to this application but looking on reasons deponed in affidavit the same raise a novel point of law which need to be determined by the Court of Appeal.

I therefore find merit in this application and in considering that the same was not contested, the Applicant is granted leave to appeal to the Court of Appeal as so prayed. The appeal should be filed within 30 days from today.

DATED at **ARUSHA** this 23rd Day of May 2022




D. C. KAMUZORA

JUDGE