

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 129 OF 2022

KIBAIGWA CARGO PORTERS APPLICANT

VERSUS

KARIBU FINANCE LIMITED RESPONDENT

**(Application from decision of this Court (Masabo, J) dated
25th February, 2022 in Civil Appeal No 242 of 2021)**

RULING

31st and 31st May, 2022

KISANYA, J.:

Before me is an application for leave to appeal to the Court of Appeal made under section 5(1)(c) of the Appellate Jurisdiction Act, Cap. 141, R.E. 2019. The decision against which it is desired to be appealed was delivered by this Court (Masabo, J) in Civil Appeal No. 242 of 2021.

Supporting the application is an affidavit sworn by Dismass Malemi Michale, as an authorized officer of the applicant. Pursuant to paragraph 5 of the supporting affidavit, the points worth of consideration by the Court of Appeal are to the following effect: -

1. Whether the trial court had jurisdiction to hear and determine Civil Case No. 92 of 2018.
2. Whether the respondent was eligible to operate as a financial institution without a proper license to conduct such business.
3. Whether the exhibits were properly admitted by the trial Court.
4. Whether the loan agreement was admissible without payment and attachment of stamp duty.

When this application came up for hearing, the applicant was represented by her manager one, Mr. Dismass Michael whereas the respondent had the legal services of Mr. Heri Zuku, learned advocate.

From the outset, Mr. Zuku rose to submit that the respondent was not contesting the application. He was of the view that, the interest of justice requires the Court to grant the leave to appeal as requested. However, he prayed that each party be ordered to pay its own costs. Mr. Michael was at one with the respondent's counsel on the issue of costs of this application.

Although the application is not contested, this Court is enjoined to consider whether it is meritorious. In so doing, the court is guided by the settled law that leave to appeal is granted where the intended appeal advances issues of general principle or novel point of law or if the proposed grounds are

arguable. It is also settled law that an application for leave to appeal will not be granted if the intended grounds of appeal are frivolous, vexatious, useless or hypothetical. [See the case of **British Broadcasting Cooperation vs Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004, CAT at DSM (unreported)].

Having gone through the pleadings and annexures appended to the supporting affidavit, I am satisfied that the grounds deposed by the applicants raise points of law or arguable grounds. This is when it is considered that the grounds are premised on the decision of this Court. I find nothing to hold that the grounds fronted by the applicants are frivolous, vexatious, useless or hypothetical.

In the light of the foregoing, the application is found meritorious and allowed. Consequently, leave to appeal to the Court of Appeal is hereby granted. As agreed by the parties, I make no order as to costs.

DATED at DAR ES SALAAM this 31st day of May, 2022.



S.E. Kisanya
JUDGE
31/05/2022

