

**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. 23 OF 2022

EQUITY BANK TANZANIA LIMITED APPLICANT

VERSUS

PRUDENCE ALIBALIO KATANGWA RESPONDENT

(Arising from Civil Appeal No. 226 of 2022)

RULING

31st May & 3rd June, 2022

KISANYA, J.:

This is an application for leave to appeal against the judgment and decree of this Court (Laltaika, J.) dated 17th December, 2021 in which Civil Appeal No. 226 of 2020 was decided in favor of the respondent. The application has been filed under section 5(1) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 and rule 45(a) of the Court of Appeal Rules, 2009 as amended and supported by an affidavit sworn by Irene Peter Swai, advocate for the applicant.

The background facts leading to this application are gleaned from the supporting affidavit and its annexure. It is to the effect that: the respondent maintains a bank account with the applicant. He commissioned the applicant

to transfer 7000 Sterling Pounds from his account to the account number **GB19MIDL402803114369** held by Walker Movement in United Kingdom. It turned out that the account number had an error. The respondent informed the applicant that the correct number was **GB19MIDL402831184369**. It was alleged that the applicant failed to transfer the fund for more than two months. Therefore, the respondent instructed the applicant to revert the transaction and remit the funds to his account.

Upon failing to remit the fund to his account, the respondent instituted a suit against the applicant praying for the reliefs that; the applicant be ordered to return 7000 Sterling Pounds to his account; interest of 20% of the amount remitted from the date of the breach of instruction; costs of the suit; and general damages to the tune of Tshs. 800,000,000/=.

In its judgment, the trial court held the view that the applicant is not liable to the respondent's claims. However, it ordered the applicant to help the respondent to communicate with the beneficiary's bank to ensure that funds is applied in according to the intended purpose.

Undeterred, the respondent successfully appealed before this Court. This court's decision aggrieved the applicant who lodged the notice of appeal to the Court of Appeal. As the law demands, the applicant was inclined to file the present application for leave to appeal. In terms of paragraph 6 of the supporting affidavit, grounds to be elevated to the Court of Appeal are as follows: -

- 1. That the appellate Judge erred in law and in fact for holding that the applicant is to pay the Respondent the whole amount of sterling pound 7000.*
- 2. That the appellate Judge erred in law and fact by quashing the whole judgment and decree of the district court.*

The application is being contested by the respondent. He deposed in the counter-affidavit that the applicant has not advanced a point of law.

At the hearing of this application, the applicant was represented by Mr. Kephas Mayenje, learned advocate. On the other side, Mr. Robert Jagad, learned advocate appeared for the respondent.

Mr. Mayenje commenced his submission in chief by praying to adopt the supporting affidavit to form part of his submission. He then referred me to the decision of this Court in **Said Ramadhan Myanja vs Abdallah**

Sallehe [1996] TLR 74 where it was held that leave to appeal should be granted if the grounds raise contentious issues. The learned counsel went on to contend that the grounds deposed in paragraph 6 of the affidavit are purely matter of law and raises substantial questions to be determined by the Court of Appeal. He further contended that the said grounds raise issues of general importance on the account that the same are based on the decision of this Court. He was of the view that the factors for granting leave to appeal which were stated in the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (unreported) have been met. That being the case, the learned counsel urged me to grant the application. He was also of the firm opinion that the respondent will not be prejudiced if the application is granted.

In his reply submission, Mr. Jagad also adopted the counter affidavit in opposing the application as part of his submission. He moved the Court not to grant the application on the reasons that the grounds stated in the supporting affidavit do raise arguable grounds and that the applicant had not demonstrated on the chances of success of his appeal. He fortified his argument by citing the case of **Buckle vs Holns** (1992) All ER 91.

When Mr. Mayenja rose to rejoin, he reiterated that paragraph 6 of the supporting affidavit contains arguable grounds. He also contended that the case of **Buckle vs Holns** (supra) did not discuss the requirement for chances of success of the appeal at the time of granting leave to appeal.

I have carefully considered the submissions for and against the application. This being an application for leave to appeal, the issue for determination is whether the decision subject to the intended appeal raises legal points which are worth consideration by the Court of Appeal. This stance was taken in the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, (supra) referred to by Mr. Mayenga. In that case, the Court of Appeal 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 case or arguable appeal."

In another case of **Nurbhai N. Rattansi vs Ministry of Water, Construction, Energy, Land and Environment and Hussein Rajabali Hirji** [2005] TLR 220, it was held that leave is granted if the matter raises a legal point worth to be considered by the Court of Appeal.

Having gone through the impugned judgment and submissions made by the learned counsel for the parties, I am satisfied that the second ground is too general. The applicant has not demonstrated how this Court erred by quashing and judgment and decree of the trial court.

With regard to the first ground, I have considered that the trial court was of the view that the applicant is not liable to pay 7000 Sterling Pounds claimed by the respondent when it held as follows: -

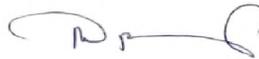
"... having found that, the defendant cannot be adjudged to shoulder the blame, for failure to apply the funds by the beneficiary's bank, the parties' relief herein can be to abide to customer bank relationship whereby the defendant has to held the plaintiff to communicate with the beneficiary bank so that the transferred fund can be applied for the plaintiff's purpose."

On appeal, this Court held the view that the applicant is liable to pay the said amount of 7000 Sterling Pounds. That is when the issue whether this Court erred in law and fact by holding that the applicant should pay the Respondent 7000 sterling pounds arises. Considering that the said ground is based on the decision of this Court, I am of the view that it is arguable and that it raises issues of general importance. It is my considered opinion that

the said ground is arguable point and not frivolous or useless. The issue whether the intended appeal is likely to succeed cannot be determined at this stage.

In the end result, I find merit in the application and allow it. Consequently, leave to appeal to the Court of Appeal is hereby granted. Costs shall follow the event.

DATED at DAR ES SALAAM this 3rd day June, 2022.



S.E. Kisanya
JUDGE

Court: Ruling delivered this 3rd day of June, 2022 in the absence of the parties. B/C Zawadi present.



S.E. Kisanya
JUDGE
03/06/2022