

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB- REGISTRY)
AT MWANZA

MISC.CIVIL APPLICATION No. 108 OF 2022

(Arising from the HC Civil Appeal No.42 of 2021)

HASHIMU HASSAN KIJUU & ANOTHER----- APPLICANT

VERSUS

MASALU JACKSON LUHUYE----- RESPONDENT

RULING

Last Order date: 17.02.2023

Ruling Date: 24.02.2023

M. MNYUKWA, J.

This is an application for leave of this court for the applicant to appeal against the decision of this court in Civil Appeal No. 42 of 2021. By way of chamber summons supported by an affidavit sworn by Innocent Michael, the learned counsel, moved this court for leave to appeal to the Court of Appeal against the decision of this Court in Civil Appeal No. 42 of 2021 which was dismissed by Kahyoza, J, on 9th May 2022. The Applicant had the service of Mr. Lucas Bundala learned counsel and the respondent was represented by Emmanuel Mayeye learned counsel. The applicant learned counsel avers that the Applicant prefers an appeal to the Court of



Appeal, thus he had to obtain leave to appeal in terms of section 5(1) (c) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] read together with Rule 45 (a) of the Court of Appeal Rules, 2009

In pressing his prayers, Mr. Bundala referred this court to the cases of **Vumi Mgunila vs Mayunga Njile Misc.** Civil Application No. 59 of 2021. He refers to the affidavit of Innocent Michael and avers that the point for determination by the Court of Appeal is shown in paragraph 6(a)-(g) and it is his prayer that the application be granted for the legal issues raised are disturbing features and therefore need to be determined by the Court of Appeal. He prays for the application to be granted with costs.

Responding to the applicant's learned counsel submissions, he prays the affidavit sworn by Emanuel Antony to be part of his submissions. Opposing the grant of the application he avers that the reasons raised are not worth for determination by the Court of Appeal. Insisting he referred this court to the case of **Rutagatina C.L vs Advocates Committee & Another,** Civil Application No. 98 of 2010 and the case of **Safari Mwazembe vs Juma Fundisha** Civil Application No. 503/06 of 2021 that the issues raised are not legal issues worth for determination by the Court of Appeal. He insisted that on the trial court judgment, all issues



were determined in the judgement of this court and therefore prays the application to be dismissed with costs.

Rejoining, Mr Bundala insisted that on the grounds advanced, they question the legality of the findings and as long as they have the right to appeal, this court has to certify that there is a point of law worth to be determined by the Court of Appeal.

In determining this application, I have considered the parties submissions and before going further to determine the merits of the application, it has to be noted that the jurisdiction of this Court to grant leave to appeal under section 5(1) (c) of the Appellate Jurisdiction Act Cap. 141,[RE: 2019] is not predicated on any conditions contrary to the submissions by the parties. This court is not called upon to determine or else comment on the decision of this court but rather to examine the reasons fronted and see if the intended appeal is arguable either in fact or law by the Court of Appeal which is the court of the competent jurisdiction.

In consideration of what is preferred by the applicant which is a leave to appeal to the Court of Appeal against the decision of this Court, I have time to go through the cited cases of **Vumi Mgunila vs Mayunga Njile Misc.** Civil Application No. 59 of 2021 and **Rutagatina C.L vs**



Advocates Committee & Another Civil Application No. 98 of 2010 and the case of **Safari Mwazembe vs Juma Fundisha** Civil application No. 503/06 of 2021. I also make a reference to the principle stated in **Hamis Mgida & Another vs The Registered trustee of Islamic Foundation**, Civil Appeal No.323 of 2018, the court pointed out that

"..the application for leave must state succinctly the factual or legal issues arising from the matter and demonstrate to the court that the proposed ground of appeal merits an appeal. The court concerned should decide whether the said proposed grounds are prima facie worth of the consideration of the court of appeal."

In line with the stated principle, I revisited the applicant's affidavit specifically in paragraphs 6(a)-(g) and based on my limits that what is sought is leave to appeal to the Court of Appeal against the decision of this court, it is my findings that the issues stated in paragraph 6 may need attention and determination by the Court of Appeal.

In that circumstance, I do hereby exercise my discretion under section 5 (1) (c) of Cap. 141 [RE: 2019] to grant leave to the applicant to appeal to the Court of Appeal. Therefore, the application for leave to appeal before the Court of Appeal of Tanzania is granted with no order as to cost.



It is so ordered.



M.MNYUKWA

JUDGE

24/02/2023

Court: Ruling delivered on 24th February 2023 in the presence of the applicant and in the absence of the defendant.

M.MNYUKWA

JUDGE

24/02/2023