

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

**MISCELLANEOUS CIVIL APPLICATION NO. 138 OF 2022**

*(From Appeal Civil Appeal No. 22 of 2022)*

**ROBERT MANONI@GERVAS ..... APPLICANT**

**VERSUS**

**FIKIRI JOHN@MIHAYO ..... RESPONDENT**

**RULING**

*Feb. 22<sup>nd</sup>, 2023 & Feb. 22<sup>nd</sup>, 2023*

**Morris, J**

Robert Manoni @ Gervas, has preferred this application moving the Court to grant him a leave to appeal to the Court of Appeal against its decision of November 9<sup>th</sup>, 2022. The Application is made vide Chamber Summons under section 5(1)(c) of ***the Appellate Jurisdiction Act***, Cap 141 [R.E.2019] and rule 45(a) of ***the Tanzania Court of Appeal Rules***, 2009. The affidavit by Robert Manoni Gervas supports the application. Applicant advances, among other grounds, that this Court failed to give due consideration to elements of defamation. The application was not contested by the Respondent.



The Court is, thus, required to determine whether or not the applicant meets the threshold of the law in worth granting leave to appeal to the Court of Appeal. Mr. Gervas prayed to adopt his affidavit as part of his submissions. He stated that the merit of his intended appeal lies in the fact that this Court misdirected itself in handling the defamatory suit. He thus contended that there are adequate merits which he wishes the Court of Appeal to revisit and adjudicate accordingly.

In determining the issue framed above, application, I am guided by the law under which the application has been made and principles in the cases of ***Suleiman Nchambi v Sunny Auto Works***, Misc. Civil Application No.89 of 2019 and ***Cosmas Anton Itungulu v Timoth M. Irunde***, Misc. Land Application No. 69 of 2021 (both unreported). Section 5(1)(c) of ***the Appellate Jurisdiction Act***, Cap.141 [RE.2019] provides that:

**'5. (1)** *In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal—*

*(a).....;*

(b) .....;

(c) *with the leave of the High Court or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court. '*

Principally, the quoted section does not specify factors to be considered by courts in granting or disallowing the application for leave to appeal. However, case law has. For instance, in ***British Broadcasting Corporation v Erick Sikujua Ngimaryo***, Civil Application No. 138 of 2004 (unreported) requisite conditions were set. They are contained in the excerpt below:

*".... 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 and on the materials before the court...**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**...However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted"*(emphasis added).

In view of the foregoing pronouncement, leave to appeal is to be granted on sound basis. In the circumstances of this matter, I am satisfied that the application is meritorious. It contains issues which are contentious and arguable. Accordingly, I grant the application for leave to appeal against the decision of this Court in Civil Appeal No. 22 of 2022. I make no order as to costs



**C.K.K. Morris**

**Judge**

**22/02/2023**