

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

MISC.CIVIL APPLICATION No. 124 OF 2022
(Arising from the HC Civil Appeal No.12 of 2021)

HUSEIN RAMADHANI----- APPLICANT

VERSUS

ISAYA PHARES ----- RESPONDENT

RULING

Last Order date: 21.02.2023

Ruling Date: 07.03.2023

M. MNYUKWA, J.

Before me is an application for leave of this court for the applicant to appeal against the decision of this court in Civil Appeal No. 12 of 2021. By way of chamber summons supported by an affidavit sworn by Husein Ramadhani the applicant, moved this court for leave to appeal to the Court of Appeal against the decision of this Court in Civil Appeal No. 12 of 2021 which was dismissed by Massam, J, on 30.09. 2022. The Applicant had the service of Mr. Mussa Nyamwelo learned counsel and the respondent was represented by Masoud Mwanaupanga learned State Attorney. The

applicant prays this court to adopt the affidavit filed by the applicant to form part of his submissions.

He submitted that the debt of Tshs 31,000,000/- was proved by a contract admitted in court as exhibit P1 and that the first appellate court erred to hold that the persons from the factory and commissioners for oath who prepared exhibit P1 were not the key witness to the applicants case. He insisted that, TPF factory was not mentioned as part to the contract and therefore does not to bear any responsibility. He avers therefore, the above are the legal issue needs to be determined by the Court of Appeal. Supporting his argument he cited the case of **Bulyanhulu Gold Mining Limited & 2 Others vs Petrolube (T) Ltd & Another** Civil Application No. 364 of 2019. He prays for the court to certify that there are legal issues to be determined by the court of appeal.

Responding to the applicants' submissions, Masoud Mwanaupanga opposed the applicant's prayers. Citing section 100(6) of the Evidence Act, Cap. 6 RE: 2019, he insisted that the presence of a contract does not limit the receiving of oral evidence to support what is in the contract. He went on that the trial court was proper to find that the case was not proved for the key witness testified in favour of the respondent and against the



applicant and therefore the issue of exhibit P1 to prove the contract cannot stand.

He went on that the court was right to draw adverse inference for the failure of the applicant to bring key witnesses without justifiable reasons. He claims that the cited case of **Bulyanhulu Gold Mining Limited & 2 Others** (supra) set criteria which were not met by the applicant. For those reasons, he prays the application to be dismissed.

In a brief rejoinder, the applicant's learned counsel submitted that whether who prepared the contract or witness from TFP were the key witness is the subject of determination by the Court of Appeal. He insisted that the grounds stated in paragraphs 6,7 and 8 are merited and insisted that the prayer be granted.

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 grounded on any conditions contrary to the submissions by the parties. I am not called upon to determine or comment on the decision of this court which is subject to this application but rather



to examine the reasons stated to find out if the intended appeal is arguable either in fact or law by the Court of Appeal.

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 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, 7 and 8 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 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
07/03/2023

Court: Ruling delivered on 07th March 2023 in the presence of the parties counsels through audio teleconference.


M.MNYUKWA
JUDGE
07/03/2023