

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT

(MUSOMA SUB REGISTRY)

AT MUSOMA

Misc. CRIMINAL APPLICATION No. 60 OF 2022

(Arising from the High Court (Musoma Sub Registry) in (PC) Criminal Appeal No. 20 of 2022; determined at the District Court of Tarime at Tarime in Criminal Appeal No. 8 of 2022; originating from Tarime Urban Primary Court in Criminal Case No. 1134 of 2021)

JOSEPH KASAWA BENSON APPLICANT

Versus

MARY CHARLES THOMAS RESPONDENT

RULING

14.03.2023 & 20.03.2023

Mtulya, J.:

This court on 18th November 2022 pronounced a judgment in **(PC) Criminal Appeal No. 20 of 2022** (the appeal) involving the present parties. In the appeal this court replied four issues in affirmative. However, **Mr. Joseph Kasawa Benson** (the applicant) was aggrieved by one holding and introduced one more issue claiming that a point of law may be raised at any point in time, even in an appeal.

Following the dissatisfaction, the applicant preferred **Misc. Criminal Application No. 60 of 2022** in this court seeking for certification on point of law to access the Court of Appeal (the

Court) to cherish determination of our final court in judicial hierarchy.

The two points of law were raised at the fourth paragraph in the applicant's affidavit, namely: first, *whether the trial court in Tarime had jurisdiction to hear and determine an offence allegedly committed in Mwanza and Zanzibar*, and second, *whether failure to repay loan within or out of time may constitute criminal offence*. On 14th March 2023, the applicant was summoned to explain on the raised issues and briefly submitted that the offences which he was prosecuted with are allegedly to have been committed in Tarime, Mwanza and Zanzibar. However, this court in the appeal had declined to consider the mandate of **Tarime Urban Primary Court** (the Primary Court) in **Criminal Case No. 1134 of 2021** (the case) for offences committed outside Tarime District.

Regarding the second complaint, the applicant submitted that he had contractual relationship with the respondent in several occasions and was not prosecuted in criminal court. However, all courts from Primary to this court have declined to consider the dispute is regulated by civil law of the land. Finally,

the applicant prayed this court to certify the two indicated points of law so that they can be intervened and resolved by the Court.

The thinking was resisted by **Ms. Mary Charles Thomas** (the respondent) contending that the *M-Pesa* transactions were wired from Tarime for activities in various parts of Tanzania, including Tarime, Mwanza and Zanzibar hence the primary court in Tarime had jurisdiction to hear and resolve the matter. In her opinion, the applicant is raising a point of law at this stage as an afterthought as he failed to complain at lower levels. Concerning the second grievance, the respondent submitted that the offence of obtaining goods by false pretence contrary to section 302 of the **Penal Code [Cap. 16 R.E. 2019]** (the Code) was committed by the applicant as he introduced himself as pharmacist and induced the respondent to give out money while well aware he is not a pharmacist. According to the respondent, he had no any contractual, written or oral with the applicant, but the applicant coined her to give out money, which is a criminal offence.

The law regulating applications like the present one shows that reasons of certification in leaves to access the Court must raise issues of general importance or novel point of law or *prima facie* case or arguable appeal or where proceedings as a whole

reveal disturbing features as to require the guidance of the Court. There are multiple decisions in the Court in support of the thinking (see: **Jireys Nestory Mutalemwa v. Ngorongoro Conservation Area Authority**, Civil Application No. 154 of 2016; **The Regional Manager-TANROADS Lindi v. DB Shapriya & Company Ltd**, Civil Application No. 29 of 2012 **Murtaza Mohamed Viran v. Mehboob Hassanali Versi**, Civil Application No. 168 of 2014; **Victoria Real Estate Development Limited v. Tanzania Investment Bank & Three Others**, Civil Application No. 225 of 2014; and **Hamisi Mdida & Said Mbogo v. The Registered Trustees of Islamic Foundation**, Civil Appeal No. 232 of 2018. This court has been cherishing the move without reservations (see: **Shaban Said Mganda v. FINCA Tanzania Ltd**, Misc. Civil Application No. 21 of 2022).

I have scanned the pronouncement of this court in the precedent of **Shaban Said Mganda v. FINCA Tanzania Ltd** (supra) and found that applicants who are seeking certifications on points of law in this court to access the Court should produce relevant materials that reveal arguable appeal. This is because leave is not automatic. It is the materials that persuades this court to exercise its discretionary mandate to grant the application in favor of the applicants (see: **Rutagatina C.L. v. The Advocates Committee &**

Another, Civil Application No. 98 of 2010; **British Broadcasting Corporation v. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004; and **Buckle v. Holmes** (1926) All E. R. 90).

The applicant in the instant application has raised two issues, and I have learned that the first may be raised at any point in time, even in an appeal and the second shows arguable appeal or need guidance of the Court. I am conscious that this court is restrained from considering and determining the raised issues (see: **Jireys Nestory Mutalemwa v. Ngorongoro Conservation Area Authority** (supra) and **The Regional Manager-TANROADS Lindi v. DB Shapriya & Company Ltd** (supra)).

The reason is obvious that to decline prejudging the merit of the appeal. The duty of resolving the indicated matters is reserved to the Court (see: **Murtaza Mohamed Viran v. Mehboob Hassanali Versi**, Civil Application No. 168 of 2014 and **Victoria Real Estate Development Limited v. Tanzania Investment Bank & Three Others**, Civil Application No. 225 of 2014).

In the end, and for the need of proper record of the court, and of course in cherishing the right to access the Court enacted in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002], I moved to grant the application.

The applicant has to access the Court in accordance to the laws regulating appeals from this court to the Court. I award no costs in the present application. The reason is obvious that the contest is still on the course in search of the rights of the parties at the Court.

Ordered accordingly.



F. H. Mtulya

Judge

20. 03. 2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of the applicant, **Mr. Joseph Kasawa Benson** and in the presence of the respondent, **Ms. Mary Charles Thomas.**

F. H. Mtulya

Judge

20. 03. 2023