

**IN THE HIGH COURT OF TANZANIA
(SONGEA DISTRICT REGISTRY)**

AT SONGEA

MISC. CIVIL APPLICATION NO. 18 OF 2022

*(Arising from Civil Appeal No. 06 of 2022, High Court of Tanzania at Songea which
Originating from Civil Case No. 08 of 2020, Songea District Court)*

NARENDER REDDY KOLAMPALLYAPPLICANT

VERSUS

RAMESH BABU NIMMAGUDA 1ST RESPONDENT

AL-AZIZIA (T) LIMITED2ND RESPONDENT

RULING

20/02/2023 & 28/03/2023

E.B. LUVANDA, J.

This is an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court sitting as a first appellate court in Civil Appeal No. 6/2022, ended in overturning the verdict of the trial court. The subject matter ranging between parties is a suit of tort of defamation. In the affidavit in support, the Applicant depicted four proposed grounds of appeal to argue at the Apex Court, in case leave sought is granted. One, whether the first appellate judge was correct or not in holding that the words uttered by the First Respondent were not enough to be regarded as offensive words to injure the Appellant's

character; Two, whether the first appellate Judge was correct or not to hold that those words were not published to the third party and or there was no any publication of those alleged words and thus does not qualify for them to defamatory words; Three, whether the first appellate Judge was correct or not to allow the Respondents casting doubts the Appellant's evidence adduced during the trial or matters which were left and not cross examined by the Respondents at the stage of appeal; Four, whether the first appellate Judge was correct or not to set aside the judgment and decree of the trial court for the reasons that the Appellant failed to prove his case on a balance of probabilities.

The Respondents opposed the above grounds arguing the Applicant will have no chance to success on the appeal looking on the nature of the proposed grounds for leave.

In reflection, the Applicant presented a supplementary grounds going thus: whether it was correct in law and fact for the High Court to frame new issues and determine them without affording the parties an opportunity of addressing the court on those new issues.

In arguments, Mr. E.O. Mbogoro, learned Counsel for the Applicant submitted that granting or refusing leave to appeal to the Court of Appeal is upon the discretion of the court. That the Court of Appeal had

set out threshold to be exercised while exercising that discretion: **Jireys Nestory Mutalemwa vs Ngorangono Consermation** (sic, **Conservation**) **Area Authority**, Civil Application No. 154/2016; **British Broad Casting Corporation vs Erick Sikujua Ng'imaryo**, Civil Application No. 138/2004. The learned Counsel submitted that the issue of publication which was framed at the appeal stage, was not dealt with by the trial court as a distinct issue, also the issue of whether the statement was directed to the Respondent, according to him was entirely a new issue. He submitted that the issue of falsity of the words uttered, was introduced for the first time at appeal state.

He complained to have not afforded opportunity to address them. He cited the case of **R.S.A. Limited vs Hans Paul Automechs Limited and Another**, Civil Appeal No. 179/2016.

In opposition for leave, Mr. Seleman Almasi learned Advocate for Respondent, submitted that granting leave is not a mere formality, rather the Applicant must demonstrate material sufficient to show that, the intended appeal carries an arguable case, that merits attention and engagement of the Court of Appeal, made reference to the case of **Jireys Mutalemwa** (*supra*); **Access Bank Tanzania Limited vs Koti**

Brothers Co. Ltd, Misc. Civil Application No. 678/2020: **Safari Mwazembe vs Juma Fundisha,** Civil Application No. 503/06 of 2021.

He submitted that the first, third and fourth ground does not raise any issue of general importance or novel point of law and arguable appeal. That these grounds are frivolous, useless and hypothetical and do not meet the threshold set for granting leave to appeal.

Regarding the second ground of appeal, he submitted that nowhere the court came with such finding, hence, it is frivolous, vexatious, useless and hypothetical.

He submitted that there are no new issues raised by the court on composing the judgment as alleged on the supplementary appeal. He submitted that the court was trying to answer and address the combined grounds of appeal number one, two, three and four which touches on the elements of defamation which the trial court alleged to have been proved by the Applicant. He submitted that the first appellate court was duty bound to re-evaluate the evidence tendered by the parties and come up with correct findings.

On rejoinder, the learned Counsel for Applicant submitted that authorities cited by the Respondent support the application. That the

case of **Safari** (*supra*) support the Applicant's application on the rule against framing and determining new issues not entertained at trial court.

It is to be noted that at leave stage, the court does not sit to assess correctness or otherwise of the verdict or findings of the impugned judgment subject for leave. Rather my paramount role is just to throw a glance on the proposed grounds subject for leave whether they meet the minimum threshold of arguable case at the Apex Court.

To my quick assessment on the proposed grounds of appeal, the supplementary grounds of appeal is worthy for consideration by the Apex Court. My premises is grounded on the reply by the learned Counsel for the Respondent, I reproduce hereunder,

'Critical examination of the 1st appellate court judgment can clearly reveal that there are no new issues raised by the court on course of composing judgment as alleged by applicant'

To my view this attract attention of the Apex Court, regarding the approach taken by this court in addressing grounds of appeal vis-à-vis the so called new issues introduced or framed at the time of composing or crafting judgment. This is without prejudice to the domain of the first

appellate court duty to re-evaluate the evidence tendered and come up with its findings.

Similarly, grounds number one, two and four, to my view are arguable. The issue of chance of success on the appeal or otherwise, is the exclusive domain of the Apex Court. Ground number three is marred with ambiguity, the way is crafted tend to suggest that there are matters which were not cross examined by the Respondent at the stage of appeal. To my view is somehow awkward and novel idea, to say there was a cross examination of witnesses at the appeal stage, it is a misconception. Therefore, the third ground is discarded.

Therefore, leave is granted in respect of proposed grounds number, one, two, four and a supplementary ground. To be precise, leave is granted for the Applicant to appeal to the Court of Appeal on the following issues, renumbered as here under:

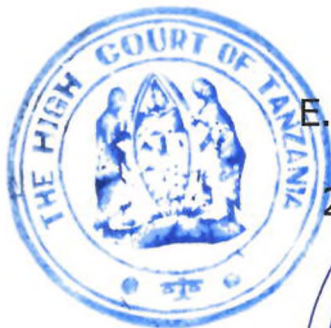
1. Whether the first appellate judge was correct or not in holding that the words uttered by the First Respondent were not enough to be regarded as offensive words to injure the Appellant's character;
2. Whether the first appellate Judge was correct or not to hold that those words were not published to the third party and or there

was no any publication of those alleged words and thus does not qualify for them to defamatory words;

3. Whether the first appellate Judge was correct or not to set aside the judgment and decree of the trial court for the reasons that the Appellant failed to prove his case on a balance of probabilities;
4. Whether it was correct in law and fact for the High Court to frame new issues and determine them without affording the parties an opportunity of addressing the court on those new issues

The application is granted.

Each party will shoulder his or her costs.



E.B. LUVANDA
JUDGE
28/03/2023

