

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 555 OF 2022

*(Arising from consolidated Civil Appeal No 273 of 2020 and 288 of 2020
originating from Kisutu Resident Magistrates Court Civil Case No 40 of
2017)*

GA INSURANCE TANZANIA LIMITEDAPPLICANT

VERSUS

1. FRANCIS BILAMATA BUTTO (in his capacity as

The administrator of the estate of the

late ZAINABU POTEA BUTTO.....**RESPONDENT**

2. EXPRESS TRADING AGENCIES LTD.....RESPONDENT

3. MSHAMI SHAIBU MSANGI..... RESPONDENT

RULING

21st Feb & 4th April 18, 2023

MKWIZU, J.

This ruling is in respect of an application for leave to appeal to the Court of Appeal by the Applicant made under section 5(1) (c) of the Appellate Jurisdiction Act [CAP 141 R.E 2019].

When the application came before me for orders on 21/2/2023, Mr. Yusuoh Sheh was in court holding the brief of Mr. Hamida Sheh for the applicant. Mr. Goffrey Joseph Chitawala advocate appeared for the 1st respondents while the 2nd and 3rd respondents had the services of Mr. Kishaluli Hendry also a learned advocate. At the instance of Mr. Yusuph

Sheh, the matter was scheduled for hearing through written submissions, and I thank the parties for adhering to the filing schedules.

Submitting in support of the application, the applicant's counsel said he is compelled to seek leave to the Court of Appeal because this is a second appeal, and they feel that the decision of this court in the consolidated Appeal Nos 273 and 288 of 2020 was in total ignorance of the insurance laws which need to be examined by the Court of Appeal. He said, it was the insured and the third party who were the victims of the insurance fraud by the Broker and yet it was the wrong party, the insurer who was decreed to pay all the damages to the third party. He said the insurance policy cover had expired before the date of the accident, raising a question of whether there was an insurance policy in this case and other anomalies that he thinks need to be examined by the Court of Appeal. He cited to the court the decision in **Bulyanhulu Gold Mine Limited and three others Vs Petrolube (T) Limited** (2020) 2TLR pages 175 to 184 and **Lembrice Israel Kivuyo Vs M/s DHL World Express & M/S DHL Tanzania Limited** (2007) TLR, 162 to 164 to support his argument.

The 1st respondent's counsel's submissions were short but focused. He said, leave to appeal is not automatic and the procedure for leave was established to prevent the time of the Court of Appeal from being wasted by busy bodies with trivial complaints and to eliminate at early stages frivolous and vexatious cases from going to the Court of Appeal and create a superfluous backlog. Citing to the court the decisions in **Federico Gellini Versus Jaco Roellene Du Plessis Safari of South Africa** Commercial Case No. 67/2004 High Court of Tanzania and **Sango Bay Estate Ltd & Others v Dresdner Bank** [1971] EA 17 pg 20;

Rutagatina C.L vs The Advocates Committee & Another Civil Application 98 of 2010(unreported); and **Harban Haji Mosi and another V Omary Hilal Seif and Another**, (2001)TLR 409 the 1st respondent counsel said, in an application of this nature, the court is required to examine whether there are grounds of appeal meriting serious consideration by the Court of Appeal.

The respondent counsel said, though the applicant has raised seven grounds for leave to appeal under paragraph 4 of the affidavit, his submissions are on other matters not subject to the sought for leave. He contended further that, the applicant's claim that there are numerous errors in the judgment lacks clarification as no single error was pointed out from the said judgment. He, in elaboration, said the issue of fraud raised by the applicant was not at issue at the trial court, and that the issues as to whether the broker is an agent of the insured is settled under section 72 (1) and (2) of the Insurance Act and the court of appeal in the case of **Niko Insurance Tanzania Limited V Hussein Athumani Mwaifusi**, Civil Appeal No 168 of 2017 and therefore leave cannot be a grant for the determination of the settled issues.

To him, the issue of remittance of the premium is a factual issue that cannot be referred to the Court of Appeal. He on this, relied on the decision of **Asher Naftal v Cornelio Ally**, Misc. Land Application No 149 of 2018 (High Court unreported). He urged that the listed grounds raise no arguable ground of appeal to be forwarded for the Court of Appeal's determination. He invited the court to dismiss the application with costs.

Like the 1st respondent counsel, Counsel for the 2nd and 3rd respondent submitted that for an application for leave to succeed, there must be an

arguable point as decided in the case of **Bulyanhulu Gold Mine limited an Others V Petrolube (J) Isa Limited** Civil application No 364/16/2017 and **Sango Bay Ltd and others and Dresdner Bank**(Supra). And the decision to allow such an application depends on the nature and circumstances of each case. To him, the deposed intended grounds are the same grounds advanced in the first appeal, and therefore nothing contentious points were raised to warrant the granting of the prayers sought. He invited the court to dismiss the application with costs.

As rightly submitted by the parties' counsels, for an application for leave to appeal to be granted, the applicant must establish the existence of a point of law that deserves consideration by the Court of Appeal. See for instance the decision **in Nurbhai N. Rattansi v. Ministry of Water Construction, Energy, Land, and Environment & Another** [2005] T.L.R 220 where it was held:-

"In determining an application for leave to appeal to the Court of Appeal, the Court must ascertain if there is a legal point worth being considered by the Court of Appeal."

I have considered the respective affidavits of the parties and their submissions. I have as well considered the six points raised by the applicant in paragraph 4 of the supporting affidavit, and I am satisfied that the applicant has established that there are points of law that need to be determined by the Court of Appeal

To that end, the application for leave is granted as prayed. Costs to be in the cause.

Dated at Dar es Salaam this 4th day of April 2023.



A handwritten signature in brown ink, appearing to read "E. Y Mkwizu", with a long horizontal flourish underneath.

E. Y Mkwizu
Judge
4/4/2023