

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

MISC.CIVIL APPLICATION No. 06 OF 2023

(Arising from the judgment of this court in Civil appeal No.14 of 2022, in the High Court of Tanzania at Mwanza dated 28.11.2022 before Kahyoza, J.)

MAHAMUD HAJI SWAIBU----- APPLICANT

VERSUS

SONIA ENTERPRISES CO.LTD----- RESPONDENT

RULING

Last Order date: 02.05.2023

Ruling Date: 03.05.2023

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. 14 of 2022. By way of chamber summons supported by an affidavit sworn by the applicant, moved this court for leave to appeal to the Court of Appeal against the decision of this Court in Civil Appeal No. 14 of 2022 which was dismissed by Khyoza, J. on 28.11.2022.

In prosecuting of this application, Mr. Jackson Ryoba learned counsel appeared for the applicant and Mr. Julius Mushumbuzi learned counsel appeared for the respondent. The matter proceeded by way of



audio teleconference for the applicant learned counsel through mobile phone no. 0756305954 and the respondent learned counsel appeared in person in this court. The applicant's counsel prays this court to adopt the affidavit filed by the applicant to form part of his submissions.

In his brief submissions, he avers that he prays this court to grant leave to the applicant to appeal to the Court of Appeal for the issues stated on paragraph 5 of his affidavit. He went on that, issues stated in that paragraph need the attention of the Court of Appeal for they are worthy of determination. He prays for the court to certify that there are legal issues to be determined by the Court of Appeal and grant the application.

Responding to the applicant's submissions, Mr. Julius Mushobozi for the respondent conceded to the applicant's application. He submitted that after he went through the applicant's affidavit specifically in paragraph 5, he has nothing to object to the application. He therefore retires and prays the costs of the application to follow the event.

In determining this application, I firmly understand 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.

Going to the applicant's affidavit, specifically in paragraph 5, I agree with the applicant's counsel that the stated issues are arguable and need the attention of the Court of Appeal as also conceded by the respondent's learned counsel.

In consideration of my limits and 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 **In the case of Harban Haji Mosi and Another vs Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997 CAT (unreported), the Court of Appeal of Tanzania laid down the following principles:

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as a whole reveals such disturbing feature as to require the guidance of the Court of Appeal."

In that circumstance, I proceed to hold that there are disturbing circumstances worth for determination by the Court of Appeal and 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.

Cost of the suit to follow the events

It is so ordered.




M.MNYUKWA
JUDGE
03/05/2023

Court: Ruling delivered on 03rd May 2023 in the presence of the respondent's representative and in the absence of the applicant.


M.MNYUKWA
JUDGE
03/05/2023