

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 472 OF 2022

*(Arising from the High Court of Tanzania, Dar es Salaam District Registry in Civil
Revision No. 04 of 2021)*

SAID KIPAGAME KASWELA APPLICANT

VERSUS

MOSHI ALFANI RESPONDENT

RULING

18/01/2023 & 31/03/2023

BWEGOGGE, J.

The applicant lodged the application herein praying for leave to appeal to the Court of Appeal to challenge the ruling and order of this court in Civil Revision No. 04 of 2021. The application is brought under section 5 (1) of the Appellate Jurisdiction Act [Cap.141 R.E. 2019] and is supported by the affidavit sworn by the applicant.

The background of this case, as depicted by pleadings and annextures filed hereto, is as thus: The respondent successfully commenced civil proceedings against the applicant for malicious prosecution. He was awarded a sum of TZS 30,000,000/= as compensation. Later on, the respondent commenced execution proceedings praying the trial court to order the applicant to satisfy the decree or otherwise to be condemned to civil imprisonment, in default thereof. The trial court ruled that condemning the applicant to prison would amount to punishing an obedient and indigent person for failure to satisfy the decretal sum. The respondent was aggrieved by the ruling of the trial court and filed revision proceedings in this court. This court found that the applicant failed to furnish evidence before the trial court to enable it to arrive at the conclusion that the applicant was a person of no means; hence, unable to satisfy the decretal sum. Consequently, the decision of the trial court was quashed and orders entered thereon set aside. It was ordered that execution proceedings to resume. The applicant was not amused by the decision of this court; hence, preferred to lodge the application herein for leave to appeal to the superior court.

The parties herein, who fended for themselves, prayed to argue the application by way of written submissions. This court granted the prayer

whereas both parties duly filed their respective submissions within the scheduled period.

The applicant was brief in his submission in that he is subjected to civil imprisonment proceedings without any iota evidence that he absconded the execution proceedings or attempted to free from the jurisdiction of the court and, or concealed his properties so that the decree could not be satisfied. The applicant further argued that the application herein raises arguable issues of law and, or issues of general importance to entitle him grant of leave. The applicant cited the cases of **Hamis Mdida and Another vs. The Registered Trustees of Islamic Foundation** (Civil Appeal No. 232 of 20018) [2019] TZCA 358 among others, to validate his point.

On the other hand, the respondent contended that the applicant was obliged by law to establish that there are contentious issues of law, disturbing features and, or an arguable issue, to require the guidance of the Court of Appeal which he failed to discharge. The respondents referred to the cases of **Said Ramadhani Mayange vs Abdallah Salehe** [1996] TLR 74 and **Jireyes Nestory Mutalemwa vs. Ngorongoro Conservation Area Authority** (Civil Application No. 154 of 2016) [TZCA] 9, among others, to make his point.

Further, the respondent charged that the applicant has deliberately failed to satisfy the court decree as he failed to bring evidence to prove he is poor to move the court to declare him insolvent. That the fact that the applicant hires advocates to represent him in court, specifically in the court of first instance, negates his assertion that he is impoverished. Therefore, opined the respondent, the only remedy available was to confine the applicant as a civil prisoner. On the above premises, the respondent prayed this suit to be dismissed with costs.

The issue before this court is whether the application herein is meritorious.

As rightly submitted by the respondent, the application for grant of leave to appeal to the superior court can only succeed upon the applicant demonstrating that there is a point of law involved or arguable appeal for the attention of the court. See the cases of **British Cooperation vs. Erick Sikujua Ngimaryo** (Misc. Civil Application No. 138 of 2004) [2005] TZCA 93; **Wambele Mtumwa vs. Asha Juma**, Civil Application No. 45 of 1999, CA (unreported); **Gaudensia Mzungu vs. I.D.M. Mzumbe**, Civil Application No. 94 of 1999, CA (unreported), among others.

The applicant herein has proposed two versions of purported points of law to be certified by this court for determination by the Court of Appeal. The earlier version is averred in the affidavit supporting the application herein whereas the later version is encompassed within the applicant's written submission. I find the later version vague and incomprehensive. Therefore, I opt to scrutinize the earlier version of the proposed points of law for consideration by the superior court as averred in the affidavit supporting the application. The same may be restated as thus:

1. The High Court failed to consider the fact that the applicant has not deliberately disobeyed the trial court order to pay decretal sum.
2. The High Court failed to consider the fact that the applicant is poor and sick.

It is self-evident that the applicant's proposed points of law are intended grounds of appeal. Having gone through the record of this case, specifically the decision of the trial court on execution proceedings and the decision of this court on revision proceedings, I am of the settled opinion that there is no *prima facie* case and, or arguable appeal to warrant grant of leave to appeal to the superior court. I need not reiterate that, in revision proceedings, this court found neither material facts suggesting that the

applicant is a person of no means nor sufficient cause furnished for his failure to satisfy the judgment debt.

In the event, this court finds the application herein devoid of merit. Consequently, the application is hereby dismissed with costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 31st day of March, 2023.




O. F. BWEGOGGE
JUDGE