

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISC. CIVIL APPLICATION NO. 19 OF 2022

(Arising from Judgment and Decree of the High Court of Tanzania at Tabora in Civil Appeal No. 05 of 2021, before Hon. A. B. Salema, J.)

ACCESS BANK TANZANIA LTD APPLICANT

VERSUS

TINCOM CO. LTD..... RESPONDENT

Date of Last Order: 07/03/2023

Date of Delivery: 19/04/2023

RULING

KADILU, J.

The applicant has applied for leave of this court to appeal to the Court of Appeal of Tanzania against judgment and decree of the High Court in Civil Appeal No. 05 of 2021. The application is supported by an affidavit of the applicant's Advocate. The respondent filed a counter affidavit to oppose the application. The applicant's grounds of application are that **firstly**, the Hon. Judge erred in law and fact by holding that written approval of the respondent was necessary before auctioning the property. **Secondly**, the applicant contends that the Hon. Judge erred in law and fact by holding that the applicant failed to prove breach of contract by the respondent while there was justifiable evidence to prove the same. **Thirdly**, the applicant alleges

that the Hon. Judge erred in law for failing to consider evidence on record and awarded TZS 20,000,000/= to the respondent.

When the application was called for hearing, the applicant was represented by the learned Advocate Mr. Patrick Suluba while Mr. Mussa Daniel Martin appeared for the respondent. Before determination of the application, the court ordered Mr. Mussa Daniel Martin to file a Board Resolution from the respondent authorizing him to represent the respondent in this matter. Mr. Patrick was the first to submit. He reiterated the grounds of application as contained in his affidavit and prayed the court to grant leave. Mr. Mussa on his part urged the court to adopt his counter affidavit and prayed for the application to be dismissed.

After having considered submissions of the parties, the issue for determination is whether the grounds of the intended appeal raise arguable issues calling for attention of the Court of Appeal in the event leave is granted. It is mandatory for a person intending to appeal against the decision of the High Court as the first appellate court to apply for and obtain leave to appeal. Moreover, a person applying for leave to appeal must establish that there are contentious point(s) of law or disturbing features requiring guidance of the Court of Appeal. See the case *of Said Ramadhani Mayange v Abdallah Salehe [1996] TLR 74*, in which it was held that where there are contentious issues of law, it is a fit case for further consideration by the Court of Appeal.

It is further a settled position of the law that in determining whether to grant leave to appeal or not, the court should guard itself against crossing

a thin line of considering the merit of the appeal. This was stated by the Court of Appeal in the case of ***Jireyes Nestory Mutalemwa v Ngorogoro Conservation Area Authority, Civil Application No. 154 of 2016***. The Court of Appeal observed that the court shall consider the grounds for seeking leave in isolation of the submissions seeming to challenge the findings of the High Court.

"The duty of the Court at this stage is to confine itself to the determination of whether the proposed grounds raise an arguable issue(s) before the Court in the event leave is granted. It is for this reason the Court brushed away the requirement to show that the appeal stands better chances of success a factor to be considered for the grant of leave to appeal. It is logical that holding so at this stage amounts to prejudging the merits of the appeal."

Given the above position of the law, the task of this court is to determine whether there are arguable issues worthy to be considered by the Court of Appeal. The applicant has raised three issues calling for the intervention of the Court of Appeal. The applicant raised the issue as to whether it was right or justifiable for the appellate Judge to hold that the respondent was entitled to the sum of Tshs 20,000,000/= being compensation for loss of expectations. For this reason, I am of the view that there is a legal point for consideration by the Court of Appeal namely; whether it is appropriate for the court to order payment of a specific amount of money as general damages while there was no proof of breach of contract by the applicant.

The other point raised by the applicant is whether it was right for the Judge to hold that written approval of the respondent was necessary before auctioning the property. I therefore find that in the present application, there are arguable issues to be considered by the Court of Appeal. In this regard, the applicant is granted leave to file the intended appeal within thirty (30) days from the date of this order. Each party shall bear its own costs.

Order accordingly.


KADILU, M.J.

JUDGE

19/04/2023

Ruling delivered in Chamber on the 19th Day of April, 2023 in the presence of Mr. Mussa Daniel Martin, Principal Officer of the respondent. The applicant is absent.


KADILU, M.J.,

JUDGE

19/04/2023.