

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

AT MWANZA

MISC.CIVIL APPLICATION NO.86 OF 2022

(Originating from HC. Civil Appeal No.30 of 2021)

ILEMELA MUNICIPAL COUNCILAPPLICANT

VERSUS

NDEONASIA JOSEPH MARENGERESPONDENT

RULING

30th May & 1st June,2023

DYANSOBERA, J:.

This ruling is on an application for leave to appeal to the Court of Appeal. It is made under section 5(1) (c) of the Appellate Jurisdiction Act [Cap.141. R.E.2019] by way of a chamber summons supported by an affidavit sworn by Mr. Ludovick Joseph Ringia, the Solicitor of the applicant.

The leave sought is against the decision of this court (Hon. Itemba, J.) delivered on 29th July, 2022 in Civil Appeal No.30 of 2021 in favour of the respondent. This application was preceded by a notice of appeal lodged on 5th August,2022.

The brief facts of the case according to the applicant's affidavit are that the respondent sued the applicant in Civil Case No. 15 of 2020

in the Court of a Resident Magistrate claiming TZS 93, 503, 500/- for unlawful confiscation of an assortment of goods in his shop No. 95 and 158 at Buzuruga area. In its judgment delivered on 18th May, 2021, the trial court found for the applicant by dismissing the Respondent's claims with costs. Disgruntled, the respondent preferred an appeal to this Court in Civil Case No. 30 of 2021 challenging the judgment of the trial court. In its judgment dated 29th July, 2022, this Court reversed the trial court's decision and awarded the respondent general damages to the tune of TZS 60, 000,000/=. The applicant now seeks to impugn the judgment of this court, hence this application for leave to appeal to the Court of Appeal.

At the time of hearing of this application, the applicant was represented by Mr. Patrick M. Muhere, learned Senior State Attorney while the respondent paddled his own canoe. Mr. Muhere adopted the contents of the affidavit and urged the court to grant the leave. On his part, the respondent was firm that the judgment given by this court was just and needs no interference by the higher court.

In his rejoinder, learned Senior State Attorney insisted that for purposes of justice, the court should grant leave.

I have considered the affidavit filed for the applicant and the respondent's counter affidavit as well as the brief submission of both the learned Senior State Attorney and the respondent. In point of fact, in an application of this nature, it has been held by this court and the Court of Appeal time without number that leave will be granted only when the intended appeal has some merits whether factual or legal. See **Ms. Ilabila Industries Ltd and 2 others v. Tanzania Investment Bank and Another**, Commercial Case No.27 of 2002 (HC) (unreported) and **Wambele Mtumwa Shamte v. Asha Juma, Civil Application No.45 of 1999 CAT** (unreported).

For instance, in the **Wambele Mtumwa Shamte** case (supra) the Court of Appeal acknowledged that:

"The law provided no explicit factors to be taken into account in deciding whether to grant leave, the Court reiterated generally that leave would be granted if the intended appeal has some merits whether factual or legal".

Now the issue for determination is whether the intended appeal has some merits factual or legal.

The applicant through the affidavit sworn by Ludovick Joseph Ringia has set out, under sub-paragraphs (a) to (d) of paragraph 8 the

points of law in respect of which leave is sought. These points are, whether it was proper for the appellate court to allow new grounds of appeal to be argued without obtaining leave prior, whether it was proper to hold that the nature of the case was based on contract with time limit of 6 years thus filed within time, whether the High Court was justified to hold that the burden of proof lied upon the applicant herein who was the defendant after it had found that the plaintiff failed to discharge his and whether the High Court applied proper basis to award general damages to the tune of TZS 60, 000, 000/=.

The grounds for the application for leave to appeal were set out in the case of **Sango Bay Vs Dresdner Bank** [1971] EA 17 where Spry V-P held that:

"As I understand it, leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration".

As to how to determine whether there are grounds which merit judicial consideration on appeal, I wish to borrow the wisdom from the Republic of Uganda in the case of **Ayebazibwe Vs Barclays Bank**

Uganda Ltd & 3 Ors, Miscellaneous Application No 292 of 2014 in

which the Court held that:

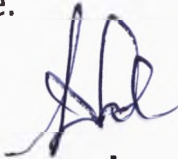
"In order to determine whether there are grounds which merit judicial consideration on appeal, the applicant has to demonstrate the grounds of objection showing where the court erred on the question or the issues raised by way of an objection. It would therefore be necessary to set out what the controversy before the court was and how it determined that controversy. For leave to appeal to be granted, the applicant must demonstrate that there are arguable points of law or grounds of appeal which require serious judicial consideration on appeal arising from the decision of the court on the controversy. It is necessary to set out the controversies upon which the court ruled and the grounds of the application which dispute or contest the correctness of the decision of the court on each controversy. Such grounds should be capable of forming the grounds of appeal deserving of serious consideration by the appellate court".

Having chewed over the application together with the supporting affidavit, paragraph 8 (a) to (d) in particular, I am satisfied that the applicant has sufficiently set out the controversies upon which the court ruled and the grounds of the application which dispute or contest the correctness of the decision of this court.

In that respect, the application is meritorious. Consequently, I grant leave to the applicant to appeal to the Court of Appeal.

No order as to cost is made.

Order accordingly.



W.P. Dyansobera
Judge
1.6.2023

This ruling is delivered this 1st day of June,2023 in the presence of Ms Mariam Omary, learned State Attorney holding brief for Mr. Patrick Muhere, learned Senior State Attorney for the applicant. The respondent is present in person



W.P. Dyansobera
Judge

