

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB-REGISTRY
AT ARUSHA

MISC. CIVIL APPLICATION NO. 21 OF 2023

*(C/f High Court of Arusha, Civil Appeal No. 17 of 2021 originating from the Resident
Magistrate Court of Arusha in Civil Case No. 4 of 2019*

ASB TANZANIA LIMITED t/s

Melia Serengeti LodgeAPPLICANT

VERSUS

RICHARD MSUYA RESPONDENT

RULING

13th & 15th June 2023

KAMUZORA, J.

The Applicant has brought this application under section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141 seeking for leave to appeal to the Court of Appeal against the decision of this court in Civil Appeal No. 17 of 2021 delivered on 10th February 2023. The application is supported by affidavit deponed by Anna Wilson Mushi, Principal officer of the Applicant. The Respondent did not file counter affidavit and when his counsel Ms. Gift Ayo appeared before this court, she informed the court that the Respondent did not file the counter affidavit as he did not intend to challenge the application.

The counsel for the Applicant, Ms. Neema Mtayangulwa adopted the Applicant's affidavit and submitted briefly in support of application. Referring the Applicant's affidavit, she submitted that the Applicant has already filed notice of appeal to the Court of Appeal dated 22nd February 2023 and the same has been served to the Respondent. That, the Applicant has also lodged a letter to the Deputy Registrar requesting to be supplied with certified copy of the proceedings of the High Court. That, the affidavit is also annexed with a draft memorandum of appeal which contains grounds upon which the decision of this court is challenged. That, the draft memorandum of appeal contains matters which need to be dealt with by the Court of Appeal. In discussing matters which need attention of the Court of Appeal, the counsel for the Applicant submitted that the decision of the first appellate court was based on extraneous matters as it shifted the burden of proof to the appellant instead of the Respondent who was originally the plaintiff. That, the Applicant believes that the appeal to the Court of Appeal has overwhelming chances of success. She therefore prayed for this court to grant leave to appeal to the Court of Appeal against the decision of this court.

I have considered the affidavit in support of application, brief submission by counsel for the Applicant and relevant law and case laws. Although this application is uncontested, I will still assess the reasons deponed if surfaces grant of leave to appeal to the Court of Appeal. It is a settled principle that an application for leave to appeal to the Court of Appeal is not automatic, it may only be granted upon establishing certain conditions. The law under section 5(1) (c) of the Appellate Jurisdiction Act does not provide for the conditions to be considered by the Court in granting leave to appeal to the Court of Appeal but those conditions are laid down by case laws. See, the cases of **British Broadcasting Cooperation Vs. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004 CAT, **Loyce Butto Shushu MacDougal Vs. Studi Bakers Tanzania Limited** and **Khalid Shabani Mtwangi**, Misc. Land Case Appeal No. 220 of 2008. In the case of **Harban Haji Mosi and Another Vs. Omar Hulal Seif and another**, Civil Reference No. 19 of 1997 (unreported) which was quoted with approval in the case of **Rugatina C.L Vs. The Advocates Committee and Clavery Mtindo Ngalapa**, Civil Application No. 98 of 2010, the Court of Appeal held that:

"Leave is granted where the proposed appeal stands reasonable chances of success or where/but not necessarily the proceedings as whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the spectre of unmeriting matter and to enable it to give adequate attention to cases of true public importance.

Similar holding was made in the case of **British Broadcasting Corporation** (Supra) where the court held that;

".....As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal, (see: Buckle v. Holmes (1926) All ER Rep. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."

In the present application, two grounds were deponed; that the decision of this court raises legal and factual issues which need consideration by the Court of Appeal and that the intended appeal stands overwhelming chances of success for the grounds of appeal raises important matters to be determined by the Court of Appeal. Reading the intended memorandum of appeal, it is clear that several issues are intended to be determined by the Court of Appeal and they include among others; illegality and irregularity of the proceedings of the trial court not resolved by first appellate court, failure of the first

appellate court in determining the issue raised before it and misdirection on the provisions of the law and assessment of evidence.

Based on the above analysis, I agree with the counsel for the Applicant that the grounds of appeal raised in the intended memorandum of appeal raises issue of general importance which need to be determined by the Court of Appeal. I therefore find merits in this application and proceed to grant the same. The Applicant is granted leave to appeal to the Court of Appeal as prayed and the appeal should be lodged within 30 days from the date of this ruling. No orders as to costs.

DATED at **ARUSHA** this 15th day of June, 2023




D.C. KAMUZORA

JUDGE

