

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA REGISTRY

AT IRINGA

MISC. CIVIL APPLICATION NO. 01 OF 2023

(Arising from Civil Appeal No. 16 of 2019 in the High Court of Tanzania Iringa Registry at Iringa, and Originating from Civil Case No. 30 of 2018 in the Mufindi District Court)

MTAKI A. MTAKI.....APPLICANT

VERSUS

UNILEVER TEA TANZANIA LIMITED.....RESPONDENT

RULING

Date of the Last Order: 07.06.2023

Date of the Ruling: 30.06.2023

A.E. Mwipopo, J.

This is application for leave to appeal to the Court of Appeal against the decision of this Court dated 16.12.2022 in the Civil Appeal No. 16 of 2019. The applicant namely Mtaki A. Mtaki was aggrieved by the decision of this Court and intends to appeal to the Court against the decision. On 03.01.2023, the applicant applied to the Deputy Registrar for the copy of proceedings, judgment and decree and on 11.01.2023 he filed in the Court of Appeal the notice of appeal. On 16.01.2023, the applicant filed the present

application praying for the Court to grant leave to appeal to the Court of Appeal against the judgment and decree of this Court in the respective case. The application is made by Chamber Summons supported by affidavit of the applicant. The applicant filed supplementary affidavit on 12.05.2023 after obtaining the permission of the Court. On the other hand, the Respondent namely Unilever Tea Tanzania Limited informed this Court through a letter dated 16.05.2023 that he does not object the application. The letter states further that the legal counsel of the respondent will not be able to attend in Court due to engagements with the Tanzania Investment Centre.

On the hearing date, the applicant was present in person and he had service of Advocate Shaba Mtung'e, whereas the respondent failed to appear. The Court ordered the hearing to proceed in the absence of the respondent.

The Counsel for the applicant prayed for the Court adopt the applicant affidavit and its content to form part of his submission. He said as the respondent did not oppose the application, he prayed for the Court to grant leave for the applicant to appeal to the Court of Appeal on the three intended grounds of appeal found in his amended affidavit. That was the end of applicant's submission.

The applicant has three grounds of intended appeal to the Court of Appeal as found in paragraph 3 (a), (b) and (c) of the affidavit. The said intended grounds of appeal are as follows hereunder:-

- 1. That the Court seriously erred in making a finding that the appeal was competent while the respondent had never attached the copy of the judgment and decree in the amended memorandum of appeal.*
- 2. That the Court erred in law by reducing the amount of general damage without focusing the time factor and the nature of the contract from its origin and its effect on the breach of contract in the business of the appellant.*
- 3. That the appellate Court did not make any findings on the nature of general damages and specific damages.*

I have read the record of this case which shows that the applicant successfully sued the respondent in the District Court for breach of contract. The trial District Court ordered the respondent to pay to the appellant shillings 32,420,000/= as specific damage, shillings 200,000,000/= as general damage, 10% interest at Court rate on the decretal sum from the date of the judgment until final and full satisfaction of the amount, and the costs of the suit. The respondent was aggrieved and successfully appealed to this Court. This Court reduced the amount of general damages from

shillings 200,000,000/= to shillings 10,000,000/=. Other orders of the trial Court were upheld.

The law is settled that the Court has discretion to grant or refuse application for leave. The leave is granted where the applicant has provided good reason. In **Rutagatina C.L. V. The Advocates Committee and Another**, Civil Application No. 98 of 2010, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), the Court held that:-

"An application for leave is usually granted if there is good reason, normally on appoint of law or a point of public importance that calls for Court's intervention."

In the case of **British Broadcasting Corporation V. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004, CAT at Dar Es Salaam, (unreported), the Court of Appeal held that 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. Leave will not be granted where the grounds of appeal are frivolous, vexatious or useless or hypothetical.

In the present application, the affidavit in support of the application shows that the applicant has already filed Notice of Appeal and has applied

for the copies of judgment, decree and record of proceedings from this court. The applicant also mentioned in the affidavit three grounds of the intended appeal. The intended grounds of appeal to be referred to the Court of Appeal appears to be arguable. I'm satisfied that the grounds are not frivolous, vexatious or useless. These grounds of intended appeal raises issues of law which need to be determined by the Court of Appeal.

For that reason, the application is allowed. The leave to appeal to the Court of appeal is granted as sought. As the respondent did not oppose the application, each party to take care of his own cost. It is so ordered accordingly.



A. E. MWIPOPO
JUDGE
30/06/2023