

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)
AT IRINGA**

MISC. CIVIL APPLICATION NO. 5 OF 2022

*(Arising from Civil Appeal No. 10/2019 of the High Court of Tanzania at Iringa before
Hon. Y.J. Mlyambina, J, Original Civil Case No. 31/2014 of the District Court of Iringa
before Hon. E. Rwehumbiza, SRM)*

BAHATI MATIMBA

.....

APPLICANT

VERSUS

JAGRO ENTERPRISES LIMITED

.....

RESPONDENT

RULING

31st May & 27th July, 2023

I.C. MUGETA, J:

The applicant seeks leave to appeal to the Court of Appeal of Tanzania (CAT). The background leading to this application as gathered from the record is that the applicant sued the respondent together with others before the Resident Magistrate Court for specific and general damages due to the respondent's act of impounding the applicant's car. The trial court found in favor of the applicant. The respondent was aggrieved by the trial court's decision. He appealed to this court. This court allowed the appeal on ground that the applicant failed to prove her claims. Aggrieved by this decision, the applicant intend to appeal to the CAT, hence, this application.

Mgeta

The applicant's affidavit, supporting the application deponed by Cosmas Kishamawe, learned advocate avers that there are important issues for determination by the CAT. These are: **One**, whether it was proper for this court to decide in favor of the respondent without evaluating the evidence. **Two**, whether it was proper for this court to nullify the decision of the trial court for lack of sufficient proof. **Three**, whether it was proper for this court to disregard the respondent's act of bringing a fake witness and **four**, whether it was proper for this court to nullify the decision of the district court despite the fact that the applicant's evidence was heavier than that of the respondent.

It is trite law that leave to appeal to the CAT is not automatic. It is granted on discretion of the court. Such discretion must nevertheless, be judiciously exercised per the decision 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 stated:-

"As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issue of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal."

Angeta

The issue for my determination is whether the present application raises issue of general importance or a novel point of law or shows a prima facie or arguable appeal. It is my view that the controversy between the parties is that this court decided the case against the weight of evidence. I am convinced that the proposed grounds of appeal raise contentious issues worth consideration by the CAT. I, therefore, find merits in the application. Consequently, I grant the application without orders as to costs because the requirement to obtain leave is a legal one.



I.C. Mugeta
I.C. MUGETA
JUDGE
27/7/2023

Court: Ruling delivered in the presence of Kishamawe, learned advocate for the applicant and Noah Utamwa, learned advocate holding brief of Antony Mwashobila, learned advocate for the respondent.

Sgd. I.C. MUGETA
JUDGE
27/7/2023