

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM SUB REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 116 OF 2023**

*(Originating from Civil Case No. 137 of 2020)*

**VIDYADHAR GIRDHARLAL.....1<sup>ST</sup> APPLICANT**

**VS**

**DR. (MRS.) INDIRA P. CHAVDA.....1<sup>ST</sup> RESPONDENT**

**PRAVINCHANDRA GIRDHARLAL CHAVDA.....2<sup>ND</sup> RESPONDENT**

**BUILDER'S (V.M. CHAVDA) LTD.....3<sup>RD</sup> RESPONDENT**

**CITY PROPERTIES LIMITED.....4<sup>TH</sup> RESPONDENT**

**RULING**

**S. M. MAGHIMBI, J:**

The applicant named above has moved this Court under the provisions of Section 5 (1) (c) of the Appellate Jurisdiction Act [Cap. 141 R. E. 2019] seeking for prayers that:

- (a) The applicant be granted leave to appeal to the Court of appeal of the United Republic of Tanzania against the decision of the High Court of the United Republic of Tanzania at Dar es Salaam (Madam Justice Maghimbi, J.) in Civil Case No. 137 of 2020 dated 17<sup>th</sup> February 2023;*

- (b) Costs of this application in the cause; and*
- (c) Incidental orders that may be made necessary to be made.*

The application was lodged by way of Chamber Summons supported by an affidavit of Vidyadhar Girdharlal Chavda, the applicant herein, dated 20<sup>th</sup> March 2023.

The application was disposed by way of written submissions. In this court, the applicant was represented by Mr. Robert Rutaiwa learned Advocate while the respondents were represented by Mr. Abdallah Gonzi learned Counsel. When the matter came for necessary orders on the 22/06/2023, apart from ordering that the same be heard by way of written submission, the Court also ordered the parties to address the Court on whether the application was filed with the prescribed time limitation set by the law.

In his submissions, Mr. Rutaiwa started by the submissions on computation of time. He submitted that the application was filed on time basing his contention on the day the same was filed. He argued that according to Rule 45 (a) of the Tanzania Court of appeal Rules, 2019 ("the Rules") an application of this nature should be filed within the period of 30 days from the date of the decision that is to be appealed against. That the computation will be guided by the provisions of Section 6 (1) of the

Interpretation of Laws Act [Cap. 1 R. E. 2019], and that they will apply section 60 (1) (b) and (e) of Cap. 1.

He then elaborated that the decision complained of was delivered on 17<sup>th</sup> February 2023 and the provisions above require the date from which the decision was delivered to be excluded hence computation should begin from the 18<sup>th</sup> February, 2023. However, he emphasized, the month of February has only 28 days and that filing of the application was required to be done on the 19<sup>th</sup> March 2023 which was a Sunday, a day which is also an excluded day therefore, the application was then to be filed on the following day which is not an excluded day.

Mr. Rutaiwa submitted further that as to when was the application file, the presented date for filing shows the same was filed on the 21<sup>st</sup> March 2023 and that looking at this date in a simple impression, it shows the same was filed out of time. He then argued that they have underlined the words “legally filed” because the Courts of Tanzania have never considered the endorsement by a registrar or registry officer with the date and signature to be the date of filing, supporting his argument he cited the case of **John Chuwa Vs Antony Ciza, 1992 TLR**. He then claimed that the date of filing of a document in Court is when fees are paid. Hence, he submitted, in determining when this application was filed the Court has to make reference to the date Court fees were paid from the receipt in records.

That the records show the same was filed on 20<sup>th</sup> March 2023 at 16:07:51 hours.

On the electronic filing, Mr. Rutaiwa submitted that Rule 21 of the Electronic Filing Rules, G.N. No. 148 of 2018, falls for their favour as the document is said to be filed when it is electronically submitted before midnight East African time. That their application was filed at 14 hours and fees were paid at 16 hours, making the application being timely filed. Resorting to the main application, Mr. Rutaiwa started by praying to adopt the affidavit of the applicant to form part of his submission. He particularly pointed to paragraph 9 where the applicant has listed issues that the latter will refer to the Court of appeal for determination as:

- (i) Whether the Court was entitled to refuse the application on the ground that TRC was not a party to the pleadings whereas TRC is holding money that is in dispute and it is TRC which requested parties to get a Court Bank Account;*
- (ii) Whether, the High Court Judge was entitled to make a finding that the plaint did not disclose specific properties whereas the said properties are specifically pleaded in the plaint specifically forming part of annexure VGC9 to the Plaint; and*

*(iii) Whether, the Honourable Judge was entitled to consider an irrelevant fact that the matter was pending before the Solicitor General a fact which does not affect the jurisdiction of the Court.*

He then submitted that, there can be no doubt that the application did finally determine the matter and the applicant has no other recourse except to appeal to the Court of appeal. Further that the applicant is entitled to enjoy the discretion of being granted leave to appeal to the Court of appeal. He argued that the test of finality of decision has been stated in a number of cases including **Tanzania Motor Services Ltd and Another vs Mehaq Singh t/a Thaker Singh Civil Appeal No. 115 of 2005**, the Court of appeal in approval quoted the decision of **Bozson vs Artincham Urban District Council (1903) IKB 547**. He concluded that the order of the court did conclusively determine the application, therefore an appeal is inevitable.

He went on submitting that since an appeal to Court of appeal require for leave before filing the appeal, it is then here they seek the leave which is within the discretion of the Court and the Court has the duty to exercise the same judiciously. They have also emphasized that the issues raised in the affidavit definitely seek for guidance from Court of appeal since they find them falling within the requirements of being granted leave. The

cases of **Bulyanhulu Gold Mine and Two Others vs Petrolube (T) Limited and Another Civil Case No. 364 of 2017** was cited to support their argument.

In reply, Mr. Gonzi Advocate begun with the issue of computation of time by strongly opposing the submission that the application before this Court was filed within time. It was his averments that they disagree with the applicant basing on section 60 (1) (b) of the Interpretation of laws Act, for it is not applicable in the present case. He submitted further that the 30 days' time limit to lodge an appeal for leave to appeal is provided for under Rule 45 (a) of the Court of appeal Rules which was quoted for ease of reference in the submission and that the applicant deliberately cited section 60 (1) (b) leaving out section 45 (a) for the use of the word **reckoned "from" a particular day** so as to substantiate their delay. His argument was that the proper law here is Rule 45 (a) of the Rules which states **within thirty days "of" the decision.**

Mr. Gonzi Learned Advocate further claimed that Rule 45 (a) of the Rules does not envisage the meaning under section 60 (1) (b) of the Interpretation of Laws Act because there is no use of the words from or after, under Rule 45 (a). It was his argument that Rule 45(a) falls within Section 60 (1) (a) of the Interpretation of Laws Act, therefore the day of the decision namely 17<sup>th</sup> February, 2023 is also included in computation

of time limit in filing the application for leave. That the time expired on 18<sup>th</sup> February, 2023 and not 19<sup>th</sup> March, 2023 as argued by the applicants. He emphasized that after introduction of the Electronic Filing Rules G.N. No. 148 of 2018, the date of making payment of filing fees is no longer decisive since under Rule 21 of the Electronic Filing Rules, it is clear that a document is counted filed when submitted before midnight East African time on the date it is submitted online and not upon payment of Court fees. He argued that the application was filed on line on 20<sup>th</sup> March 2023, hence the same was time barred.

Mr. Gonzi Learned Advocate, submitted further that the cases relied upon by the applicant were decided prior 2018, claiming that the date of payment of filing fees is the date of filing to be considered for the purpose of computation of time limits is misleading. He argued that those authorities were not meant to apply to electronically filed documents as it is now clear that once a document is filed electronically the hard copy has to be filed in Court within time. Failure to do so the document will be said to have been filed out of time. He supported his argument by citing the case of **GGN Construction Ltd vs George Johansen T/A Magefa Timber supply and Come & Call Limited vs Salum Ally Nanjalata, Revision No. 186 of 2022**, High Court Labour Division at Dar es Salaam. It was the respondent's emphasis that time limit for filing the

application at hand was one date for both online and physical components thereof, therefore the application was filed out of time.

Reverting to the main application for leave to appeal to the Court of appeal, Mr. Gonzi Advocate averred that the present application is not tenable in law as the ruling subject to the intended appeal is not appealable at all either with or without leave. He elaborated that the present application is frivolous and vexatious which does not raise any important issues for consideration by the Court of appeal. That the ruling dated 17<sup>th</sup> February, 2023 is interlocutory and hence not appealable until Civil Case No. 137/2020 is finalized. Further that the ruling emanated from an oral application made by the applicant that this Court orders compensation money due to the 4<sup>th</sup> Respondent from Tanzania Railway Corporation (hence forth TRC) be deposited in Court and the Court should provide its account for the said purpose. It should be noted that this prayer does not form part of the matters in contention in the main Case and the said TRC is not party to the said suit. After the ruling was delivered the main suit proceeded with its proceedings including mediation sessions hence the said ruling has not finally determined Civil Case No. 137 of 2020.

He submitted further that the applicant herein has misguided himself as Section 5 (d) of the Rules prohibits appeals against preliminary or



interlocutory decisions of the High Court. That the decisions that can lie to the High Court to seek for leave to the Court of appeal is upon decisions that finally determine the suit, supporting his submissions by citing the **Tahfif Mini Supermarket vs B.P Tanzania Ltd 1992 TLR 189** where the same position was held.

Concluding his submission, the respondent claimed that the application before this Court is frivolous and vexatious which does not raise any important issues for consideration by the Court of appeal of Tanzania, praying for the same to be dismissed with costs.

Having gone through the rival submission of the parties and in consideration of the application and counter affidavits, I would first begin with the issue of computation of time for ascertaining whether the application at hand was filed within time as required by the provisions of Rule 45 (a) of the Court of Appeal Rules. The applicant's submission is that the application was electronically filed on 20<sup>th</sup> March 2023 at 14.00 hrs and the fees were paid at 16.00 hrs and that under Rule 21 of the Electronic Filing Rules, G.N. No. 148 of 2018, the time falls for their favour as a document is said to be filed when it is electronically submitted before midnight East African time. This was strongly opposed by the Counsel for the respondent who attacked the submission of the applicant claiming that the applicant went in applying section 60 (1) of the Interpretation of law

Act, but the same is not applicable in the interpretation provided by the applicant. Having considered the fact that the electronic copy was filed in the system on the 20<sup>th</sup> March, 2023, the same was filed within time. This application is therefore within the prescribed time.

Going to the merits of the application, the applicant is seeking leave to appeal to the Court of Appeal against an order of this court emanating from an oral application. The order is not only interlocutory, but as pointed out by the respondent, it is not within the matters tabled for determination in the suit. The application was made by Mr. Rutaiwa on 17<sup>th</sup> March 2023 and in rejecting his prayers, the reasons advanced by the court are that first, the government (TRC) is not party to the suit before the Court while the respondent was seeking an order directing TRC to deposit money to the Court's account. Second, that the Plaintiff did not disclose the specific property that the claim is based upon. And the third reason was a concern by the Defendant's Counsel which was considered by the Court where it was stated there is a matter pending before the Solicitor general.

It is trite law that for one to appeal to the Court of appeal leave has to be sought and granted first before the intended appeal is lodged with the Court of appeal. However, that leave is not automatic, it has to be granted upon satisfaction to the court that the order is appealable (See the case of **Upendo Brackson Ngwilo vs Ashok Byrappa (Misc. Civil**

**Application No. 361 of 2022) [2023] TZHC 19123 (2 May 2023)).**

Furthermore, the discretion to grant leave is required to be judiciously exercised by the Court, based on material before it, in several decisions including the case of **Hamis Mdida & Another vs The Registered Trustees of Islamic Foundation, Civil Appeal 132 of 2018 [2019] TZCA 358**, the Court set guidelines upon which leave may be granted by citing the case of **British Broadcasting corporation Vs Erick Sikujua Ng' mario Civil Application No. 138 of 2004** (unreported) where it was stated: -

*"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 case or arguable appeal. "[Emphasis added].*

The court further cited the case of **Harban Haji Mosi and Another Vs. Omari Hilal Seif and Another, [2001] TLR 409**, where it was stated that:

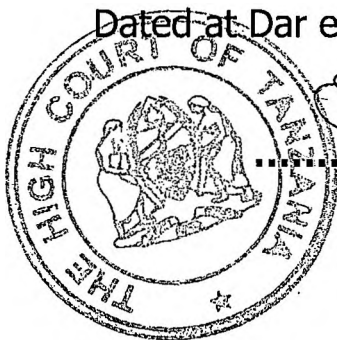
*"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is, therefore, to spare the Court the spectre*

*of unmeriting matters and to enable it to give adequate attention to cases of true public importance."* [Emphasis added].

Having all the guidelines above, and in revisiting the material grounds that the applicant is aggrieved it all waters down to the fact that the order sought for by the applicant was not final, neither was the application made in relation to the cause of action before the court. It was just an extraneous matter raised by the applicant's counsel in due course of the proceedings. All these grounds do not make the order of this court not an appealable one. Therefore Taking a closer glance of the three grounds alluded by the applicants as grounds to be tabled before the Court of Appeal, I find that the grounds posed above do not meet any of the conditions listed in the case laws in regards to granting leave to appeal to the Court of appeal.

In consequence to the above, I find the application without merits and it is hereby dismissed with costs.

Dated at Dar es Salaam this 22<sup>nd</sup> of August 2023.



**S. M. MAGHIMBI**

**JUDGE**