

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR
ES SALAAM DISTRICT REGISTRY AT DAR ES SALAAM Misc Civil
Application NO. 323 OF 2022**

(Originating from Civil Appeal No.234 of 2019 Before, Hon Masabo)

HAND ENTERPRISES APPLICANT

VERSUS

KILOMBERO CANE GROWER RESPONDENT

RULING

MKWIZU, J:

The Applicant Hand Enterprises has filed this application for leave to appeal to the Court of Appeal of Tanzania under section 5(1)(c) of the Appellate Jurisdiction Act, [Cap 141 R: E 2019] read together with Rule 45 (a) of the Tanzania Court of Appeal Rules R: E 2019] supported by the Applicant Affidavit sworn on 29th January 2022.

It is on the records that the respondent refused to accept service of the summons sent to her, he could also not respond to the notice sent via publication through Wananchi Newspaper dated 22/4/2023 prompting an *ex-parte* hearing order.

The hearing was by order of this Court made through a written submission. Mr. Abdul Aziz advocate submitted for the applicant that in law Leave to appeal is granted where the Application demonstrates that there are serious and contentious issues of the law of fact for consideration by the Court of Appeal. He relied on the **British Broadcasting Corporation Vs Eric Sikujua Ng'maryo**, Civil Application No 138 of 2004(unreported), **Jireys Nestory Mutalemwa Vs Ngorongoro Conservation Area**, Civil Application No 154 of 2016, Court of Appeal(unreported), and **Saidi**

Ramadhani Mnyanga Vs Abdallah Saleh (1996) TLR 72. He listed the issues that he thinks are arguable and serious grounds for the court's consideration as follows:

- a) Whether the Applicant did sufficiently discharge her duty on the balance of probabilities.*
- b) That there has been an offer and acceptance between the Applicant and the Respondent.*
- c) That the High Court erred in law and ordered that there was no consideration between the Applicant and the Respondent thus there was no valid contract between parties.*
- d) That the High Court erred by pronouncing that the record of the trial court is silent whether the inspection of the Applicant was done.*

He lastly urged the court to allow the application on the strength of the facts deposed in the affidavit in support of the application and his written submissions.

I have considered the application and perused the impugned decision of this court. The only valid issue at this juncture is whether the application herein is Meritorious or not. The leave sought is against the decision of this court in Civil Appeal No. 234 of 2020 delivered on 18/3/2021. Paragraphs 1 to 5 of the applicant's affidavit narrate the background events of the application. The application was as required preceded by a timely filed notice of appeal dated 31/3/2021 with a stamp of the Court of Appeal acknowledging receipt dated 1/4/2021 and a ruling of this court Misc. Civil Application No. 413 of 2021 was delivered on 30th June 2022 extending the time for the filing of this application for leave which was ultimately filed in court on 4/8/2022.

The applicant herein has proposed four grounds that he thinks are properly set to be approved for the Court's determination. I have considered all the grounds in line with this court power discussed in **Bulyanhulu Mine Limited & 2 Others Vs Petrolube (T) Limited and Another**, Civil Appeal No. page 5 of 8,364 of 16 of 2017(unreported) that: -

*"Just as a matter of guidance, we wish to emphasize that the duty of a court in applications of this nature is not to determine the merit or demerits of the ground of appeal raised when seeking leave to appeal, instead a court has only considered whether the proposed issues are embraced in the condition set in the case of **British Broadcasting Corporation Vs Eric Sikujua Ng'imaryo**(supra)*

I am satisfied that the applicant has sufficiently demonstrated arguable points worth consideration by the Court of Appeal to warrant a grant of application. Consequently, the Applicant application is granted with no orders as to costs.

Dated at Dar es salaam, this 15th Day of September 2023



E. Y Mkwizu
Judge
15/9/2023