

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 157 OF 2023**

*(Arising from Civil Appeal No. 157 of 2023)*

**JOEF GROUP TANZANIA LIMITED..... APPLICANT**

**VERSUS**

**SOZMY INTERNATIONAL TANZANIA LIMITED .....RESPONDENT**

**RULING**

*30<sup>th</sup> May, 2023*

***BWEGOGGE, J.***

The applicant herein above named instituted an application herein praying for grant of leave to appeal to the court of appeal against the ruling and order of this court in Civil Appeal No. 90 of 2022 delivered on 13<sup>th</sup> March, 2023, among others. The application is brought under section 5 (1) (c) of the Appellate Jurisdiction Act [Cap.141 R.E. 2019] and supported by the affidavit of one Joseph Misana, the principal officer of the applicant herein.

The respondent herein successfully sued the applicant for specific and general damages for breach of contract in the Resident Magistrates Court of Dar es salaam. The applicant, being aggrieved by the decision of the trial court, appealed in this court. Unfortunately, he lost the appeal. Undaunted, the applicant filed the application herein for leave to appeal in the Court of Appeal.

The applicant herein was represented by Mr. Hassan Ruhwanya, learned advocate, whereas the respondent was represented by Mr. Ahmed Mwita, learned advocate.

The counsel for the respondent refrained to file counter affidavit having been served with the chamber summons. And, when this matter was brought for necessary orders, the same enlightened this court that he has no intention to contest the application. Consequently, the counsel for the applicant prayed this court to grant the leave sought based on the pleading filed herein.

The issue for determination is whether the application herein is merited.

It is settled law that leave to appeal to the Court of Appeal is granted upon the applicant demonstrating that there are points of law or arguable appeal involved in the intended appeal. See the cases of **Jires Nestory Mutalemwa vs. Ngorongoro Conservation Area Authority** (Civil

Application 154 of 2016) [2021] TZCA 9 and ***British Broadcasting Corporation vs. Eric Sikujua Ng'maryo*** (Civil Application 138 of 2004) [2005] TZCA 93. Likewise, it is the law that *"the grounds raised should merit a serious judicial consideration by the Court."* See the case of ***Rutagatina C.L. vs. The Advocates Committee and Another*** (Civil Application 98 of 2010) [2011] TZCA 143, in this respect.

I have gone through facts deponed in the affidavit supporting the application herein. It is deponed that the judgment and decree issued by this court raise questions of law and, or arguable appeal. The issues raised in paragraphs 8 (a),(c),(e) and (f) of the affidavit supporting the application herein are as hereunder rephrased:

1. *That this court relied on the evidence of PW1 who was neither a party to the disputed oral contract nor witness to it.*
2. *That the order for payment of USD 14,700/= is unjustifiable.*
3. *That this court failed to apprehend that once the custom duties are paid the bonded warehouse rent ceases.*
4. *That this court failed to re-evaluate the evidence thus reached the wrong conclusion.*




Upon scrutiny of the above proposed legal grounds and the record of this case, I am satisfied that the same demonstrate arguable appeal for consideration by the Apex Court to warrant grant of leave sought.

In view of the foregoing, I hereby find the application herein with substance. Consequent to above finding, I hereby grant the leave to appeal in the Court of Appeal sought herein. Each party herein to bear her own costs.

I so order.

**DATED at DAR ES SALAAM this 30<sup>th</sup> May, 2023.**



  
O. F. BWEGOGGE

**JUDGE**