

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB REGISTRY
AT ARUSHA**

MISC. CIVIL APPLICATION NO. 52 OF 2023

(C/F High Court Civil Appeal No 8 of 2009, originating from Employment Cause No
17 of 2003, in the District Court of Arusha at Arusha)

ABDALLAH SAID APPLICANT

VERSUS

THE MANAGING DIRECTOR ARUSHA

INTERNATIONAL CONFERENCE CENTRE.....1ST RESPONDENT

THE ARUSHA INTERNATIONAL

CONFERENCE CENTRE2ND RESPONDENT

RULING

12th September & 07th November, 2023

KAMUZORA, J.

This application was brought under the provision of section 5(c) of the Appellate Jurisdiction Act Cap 141 RE 2019 and Rule 45 of the Tanzania Court of Appeal Rules. The Applicant is seeking for leave to appeal against the decision of this court in Civil Appeal No 8 of 2009 delivered on 1st June 2010. The application is supported by an affidavit sworn by the Applicant herein. The Respondents contested the application

through counter affidavit sworn by Juliana Deograsias Mrema, learned State Attorney.

When the matter was called for hearing, the Applicant appeared in person while Ms. Juliana Mrema and Ms. Fabiola Kisarika, both learned State Attorney appeared for the Respondents. Parties opted to argue the application by way of written submissions and they both complied to the submission schedule.

Having considered the pleadings and the submissions from both parties, the matter that need court determination is whether the Applicant was able to demonstrate that there are issues of general importance or a novel point of law or that the grounds of appeal show a prima facie or arguable appeal for this court to exercise its power in granting leave to appeal to the Court of Appeal.

From his affidavit and submission, the Applicant intends to appeal to the Court of Appeal for determination of the following grounds; one whether the redundancy agreement which was stamped CONFIDENTIAL and later downgraded on 06th May 1996 could be by any interpretation be said to be open for perusal by general public and two, whether the appellate judge was correct in holding that the fare for ferrying the Applicant together with his family and belongings from Arusha to Tabora was adequate. The Applicant believes that his appeal has great chances

of success as his grounds of appeal raises crucial point of law for the court consideration.

Referring Court of Appeal decision in the cases of **Jires Nestory Mutalemwa Vs Ngorongoro Conservation Area Authority**, Civil Application No. 154 of 2016 and **British Broadcasting Corporation Vs Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004, the Applicant submitted that the grounds advanced in the intended appeal justify the grant of leave. He explained that, as matter of law, any letter from the government of the Tanzania stamped Confidential cannot be made public by any person as per section 5 of the National Security Act, 1970. That, the fact that the letter dated 6th May, 1996 directed to the Applicant was stamped confidential, the Applicant was not allowed to disclose its contents to the third party unless so authorised.

Further that, the Respondents herein failed to prove that the fare that was paid to the Applicant herein was adequate to ferry his family and his belongings and shifted burden to Applicant without taking into consideration the agreement entered between the parties. For him, these two issues call for serious consideration by the Court of Appeal as they raise arguable appeal. He thus urged this court to allow the application by granting leave to appeal to the Court of Appeal.

In reply, the Respondents' counsel contested the application and urged this court to be guided by the decision of the Court of Appeal in **Bulanhulu Gold Mine Ltd and others Vs. Petrolube (T) Limited and another**, Civil Application No. 364/16 of 2017 and in **Lightness Damian and others Vs. Said Kassim Chageka**, Civil Application No. 450 of 2020 [2022] TZCA 713 on what the court should consider in granting leave.

Responding to the Applicant's ground that he intends the Court of Appeal to determine whether confidential letter downgraded can be open for perusal to the general public, the Respondent submitted that the same is not a reason for appeal. They explained that it is a general principle that once a confidential letter downgraded it become open to the document and those related may be availed access once requested. That, the same logic was explained by the district court as well as the high court on appeal thus not an issue worth determination by the Court of Appeal.

On the second ground that the Applicant intends to seek for the Court of Appeal determination on whether the appellate judge was correct in holding that the fare for ferrying the Applicant together with his family and belongings from Arusha to Tabora was adequate, the counsel for the Respondents submitted that the same is baseless and vexatious. They

argued that the Applicant failed to substantiate his claims at the trial and during appeal before this court by tendering evidence or rather calling witnesses to support his assertion. Referring the decision of this court in the case of **Mohamed Hamis Mawa Vs. Selemani Omary and another, Misc Land Application No. 23 of 2023**, the Respondents counsel added that leave may be granted where there is a point of law, or the intended appeal stands a good chance of success or there is a point of public importance to be determined by the Court of Appeal. They maintained that the Applicant was unable to meet the condition for grant of leave therefore prayed for the application to be dismissed.

In his brief rejoinder the Applicant added the court in **Lightness Damian** court rightly held that in determining application for leave to appeal, the court should not evaluate the merit of appeal. That the court is bound to only see to it that the intended appeal raises either factual or legal argument worth consideration by the court. The Applicant insisted that he was able to demonstrate so in his affidavit.

On the argument that the said grounds were considered by the lower court the Applicant argued that the same does not bar the Applicant from raising them before the Court of Appeal for thorough interpretation of the law and or consideration and evaluation of evidence that was not properly considered. He insisted that the evidence tendered before the

lower court including employment letter and retrenchment letter stipulating the payments for repatriation was not properly considered and the trial court wrong concluded that the payment was adequate without considering parties agreed amount for transport costs. He reiterated his prayer that leave be granted as his intended grounds of appeal worth consideration by the Court of Appeal.

Being guided by the Court of Appeal decision in **Bulanhulu Gold Mine Ltd and others** (supra), this court will not dwell on the merit of appeal rather assess if there is arguable case on appeal. Reading the decision of this court which the Applicant intends to challenge, it is without doubt that the first ground was well attended. This court at page 3 of the judgment made it clear that the evidence in record did not indicate if the redundancy agreement was confidential or downgraded on 6th May 1996. Thus, the contention by the Applicant that he intends for the Court of Appeal to determine whether the redundancy agreement which was stamped CONFIDENTIAL and later downgraded on 06th May 1996 could be interpreted to be open for perusal by general public, is incompatible to the judgment of this court. The decision of this court was clear and it never mentioned that the redundancy agreement was stamped confidential or that it was downgraded. The Applicant was bound to show if the court misdirected itself to the evidence, and not raise an issue that

was not the basis of the court's decision. I therefore do not find if this ground raises crucial point of law for the Court of Appeal consideration.

The second ground is whether the appellate judge was correct in holding that the fare for ferrying the Applicant together with his family and belongings from Arusha to Tabora was adequate. This second ground fall on matters of fact and not law. This court in its judgment re-assessed the evidence and reasoned why it found the trial court's decision proper. At page 7 of the judgment, the court referred to the calculations subsequent to the award and re-assessed the evidence before the trial court and judgment which assessed the said voluntary agreement and was satisfied with the trial court's findings. The Applicant was unable to point out what was left undecided by this court that need the determination by the Court of Appeal. In my view, the Applicant was unable to demonstrate any point of law or any matter of public importance that needs attention of the Court of Appeal.

In the upshot, I agree with the Respondents' submission that the Applicant was unable to demonstrate that his intended appeal stands a good chance of success as he was unable to shows if there is a point of law or a point of public importance to be determined by the Court of Appeal. In other words, the Applicant was unable to meet the condition

for grant of leave. I therefore dismiss the application for want of merit with costs.

DATED at **ARUSHA** this 07th November, 2023.



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora", is written over a circular stamp.

D.C. KAMUZORA

JUDGE