

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 455 OF 2023

*(Appeal from the Ruling of the High Court of Tanzania Dar es Salaam District Registry
at Dar es Salaam Hon. Kakolaki, J dated the 4th August 2023 in Civil Appeal No. 55 of
2022 Originating from the decision of the Resident Magistrate Court of Dar es Salaam at
Kisutu in civil Case No. 212 of 2017 delivered by Hon. F. Mhina, SRM)*

DELTA AFRICA LIMITED APPLICANT

VERSUS

CRDB BANK PLC 1ST RESPONDENT

VODACOMA TANZANIA PLC 2ND RESPONDENT

RULING

27th November & 14th December, 2023

MWANGA, J.

This is an application for leave to appeal to the Court of Appeal brought under section 5(1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E 2022 and rule 47 of Tanzania Court of Appeal Rules, 2009 G. N No.

368 Of 2009. The application is supported by an affidavit by Mr. Araz Mohamed.

The matter was set for hearing of an application and the applicant, **DELTA AFRICA LIMITED** was represented by Learned Counsel Mr. Daniel Ngudu, and the 2nd Respondent was represented by Mr. Idrisa Juma Learned Counsel. 1st Respondent was absent, hence the matter proceeded ex parte against her.

The leaned counsel Mr. Daniel Ngudu contends that the leave is required because this is the second appeal. According to him, there is an issue that calls for a determination of the Court of Appeal as it appears in paragraph 6 of the affidavit. The counsel submitted that the issue for determination is; **one**, whether every suit filed by a company requires board resolution. **Two**, whether the requirements are for all cases commenced by a company. **Three**, whether the requirement is both for the plaintiff and defendant. The counsel said that all these come from the High Court's interpretation of the Court of Appeal decision in **Simba Papers Converters Ltd Vs Packaging and Stationery Manufacturer Limited**, Civil Appeal No. 280 of 2017. The counsel highlighted that in his opinion, the interpretation given by the High Court is different from that of

the Court of Appeal in the above-mentioned case. Therefore, the matter is for interpretation, whether all cases are involved or not. He referred to page 18 of the said decision. He concluded that they had established a prima facie case to be granted leave to the court of appeal.

The counsel for the second Respondent, Mr. Idrisa Juma supported the application.

I have heard the submission of the learned counsel. Regrettably, the provision of section 5 of the Appellate Jurisdiction Act on which the application is brought is no longer alive. It has been laid to rest by the amendment of Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023, particularly section 10 which amended section 5 of the AJA effective 1st December, 2023. For ease of reference, the provision of the law reads;

"Sec 10 The principal Act is amended in section 5

(a) By deleting subsection (1) and substituting for it the following:

"(1) In civil proceedings, except where any other written law provides otherwise, an appeal shall lie to the Court of Appeal against every order or decree, including an ex-parte or preliminary decree made by

the High Court, in the exercise of its original, appellate or revisional jurisdiction"

As can be seen in the above-quoted provision of section 5 of AJA. It no longer exists. The court of appeal when faced with a similar issue in the case of **Petro Robert Myavilwa versus Zera Myavilwa and Erica Myavilwa**, Civil Application No. 117/06 of 2022 had this to say;

"It is my interpretation, based on the above exposition that, the changes have done away with the leave requirement for one to appeal to the Court against the decision of the High Court regardless of whether the impugned decision is an order, decree, an ex-parte decree or a preliminary decree when exercising its original, appellate or revisional jurisdiction. In other words, obtaining leave has ceased to be a requisite before one can appeal to the Court effective the 1st of December 2023".

The court added further that;

"The changes, being procedural law which its applicability has a retrospective effect, have a bearing on the application at hand in my view... leave is no longer a requirement in the wake of the said amendment. As such, this application has been overtaken by event and the only remedy is to strike it out as I hereby do"

That being said and done, this application is hereby struck out. No order to cost.

Order accordingly.



H. R. MWANGA

JUDGE

14/12/2023