

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

**MISC. CIVIL APPLICATION NO. 67 OF 2023**

*(C/F Civil Reference No. 14 of 2022, Taxation Cause No. 20 of 2020 High Court of the United Republic of Tanzania at Arusha, Original Civil Case No. 46 of 2001 & Misc. Land Application No. 56 of 2018, Resident Magistrate Court of Arusha At Arusha)*

**JULIUS CLEOPA** (As Administrator of Estate of  
**CLEOPA KIRIKENGORI**) ..... **1<sup>ST</sup> APPLICANT**  
**MR. ALFAYO KIRIKENGORI** ..... **2<sup>ND</sup> APPLICANT**  
**MR. SAMWELI MEYANI** ..... **3<sup>RD</sup> APPLICANT**  
**MR. GODSON MEYANI** ..... **4<sup>TH</sup> APPLICANT**

**VERSUS**

**JOSIA LENGOYA SADEMAKI** ..... **RESPONDENT**

**RULING**

26<sup>th</sup> September & 03<sup>rd</sup> November, 2023

**TIGANGA, J.**

In this applicant, the applicant is seeking for leave to appeal to the Court of Appeal of Tanzania against the Ruling and Drawn Order of this Court, Kamuzora, J. in Civil Reference No. 14 of 2022.

The application is by chamber summons made under section 5 (1)(c) and (2)(c) of the **Appellate Jurisdiction Act**, Cap 141 R.E. 2019 (AJA) and Rule 45 (a) of the **Court of Appeal Rules**, 2019. The application is further

supported by sworn affidavit of Mr. Lengai Sarunga Loitha applicants' advocate and in the 6<sup>th</sup> paragraph, he mentioned grounds of the intended appeal which are in extension but will summarize them without extorting the meaning as hereunder;

*(a) Whether, the High court was proper in making assumption that the error of the decree holder envisaged in the taxation cause was a mere slip of a pen an act which shall set bad jurisprudence as the respondent was ordered by the trial court to exclude a name of the Judgment debtor who was a dead person in Taxation Cause but he refuse to do so.*

*(b) Whether, it was proper for the High Court to rule that, to join the 2<sup>nd</sup> judgment debtor in Taxation Cause No 20/2020 who was a dead person is not intentional while the decree holder was a member of a family who attended the burial ceremony of the 2<sup>nd</sup> judgment debtor.*

*(c) Whether, it was proper for the High Court to order exclusion of the name of the 2<sup>nd</sup> judgment debtor from the title of the ruling of DR dated 21<sup>st</sup> September 2022 while there was no any prayer made by the decree holder to the trial court and even to the High Court to exclude the same name of the 2<sup>nd</sup> judgment debtor.*

The application was opposed through the counter affidavit sworn by the respondent in which he disputed the application on the ground that, the late Dauri Kirikengori was still alive when he filed the Taxation Cause No. 20

of 2020. He also contended that, the grounds for the intended appeal are not points of law worth to be considered by the Court of Appeal.

To understand what brought about the application at hand a brief history is important. A brief history leading to this application is to the effect that, the respondent herein filed a Taxation Cause No. 20 of 2020 before this Court, Massam R.B. Massam, Deputy Registrar (DR) (as she then was) against the applicant in respect of Misc. Land Application No. 56 of 2018 in which applicants' application was dismissed for want of merit. When this matter was still pending in court, one Daudi Kirikengori (deceased) who was among the applicant died. The matter was adjourned for 90 days so that the administrator of his estate could be appointed but he wasn't. Respondent's legal counsel prayed for the said deceased to be withdrawn from the matter for the application to continue. The prayer was granted, taxing officer taxed the costs to the tune of Tshs. 3,120,000/=.

In the final draft of the ruling however, the name of the deceased still featured on the front page as a 2<sup>nd</sup> Judgment Debtor, hence, the applicants filed Civil Reference No. 14 of 2022 before this Court, (Kamuzora, J). They complained, among other, about the presence of the deceased's name on the Ruling and the fact that the amount ordered by the DR was excessive.

This Court dismissed their reference on the ground that, the taxed amount was fair and the fact that, an order to exclude deceased name had already been granted hence, DR erroneously left his name in the ruling. She thus ordered its exclusion. It is from this holding that the applicants are now seeking for leave to appeal to the Court of Appeal on the above grounds. During hearing, the applicants were represented by Mr. Lengai S. Loitha whereas the respondent was represented by Dr. Ronilick Mchami, both learned advocates.

Supporting the application, Mr. Lengai submitted that, it is the requirement of the law that, before the court grants leave to appeal, the applicant has to establish that there is a point of law to be considered by the Court of Appeal as cited in the case of **Cocacola Kwanza Ltd vs. Charles Mpunga & 103 Others**, Civil Application No. 393/01 of 2017. He argued that, in order to remove any of the names in the application the best way was for amendment of the whole application hence this Court erred in ordering removal without a proper amendment of the application. He further argued that, it was difficult to execute the DR's decision because it had the deceased name as a 2<sup>nd</sup> judgment debtor and this Court erred in making the exclusion of his name without affording the parties a right to be heard.

Cementing on his argument, he cited the case of **Registered Trustees of Arusha Muslim Union vs. Registered Trustees of National Muslim Council of Tanzania @ BAKWATA**, Civil Appeal No. 300 of 2017 which emphasized on affording parties right to be heard on any new issues raised before making decision. He prayed that the applicants be granted leave so that, they can appeal to the Court of Appeal of Tanzania.

Opposing the application, Dr. Mchami submitted that, this application ought to be dismissed with costs for want of merit as there is no legal point of law to be scrutinized by the Court of Appeal. He argued against the 1<sup>st</sup> intended ground of appeal that, this Court's decision that it was just a slip of pen for the DR to include the deceased name on the front page of her ruling was a matter of fact as the same had been addressed and rectified by the Court. He cited the case of **Method Kimomogoro vs. Board of Trustees TANAPA**, Civil Application No. 1 of 2005, CAT at Arusha in which the Court of Appeal emphasized on the duty of the court of law to correct the illegalities, thus the Judge did not error in correcting the DR's inaction.

On the 2<sup>nd</sup> intended ground of appeal Dr. Mchami argued that, this Court, Kamuzora, J. never ruled that it was right for the deceased person to be among the judgment debtors. He also argued that, in the counter

affidavit, the respondent admitted that, when the Taxation No. 20 of 2020 was filed, the deceased was still alive and he personally served him a summons. This fact was never controverted by the applicants.

As to the 3<sup>rd</sup> intended ground, Dr. Mchami submitted that, an application to exclude the deceased from the list of judgment debtors was made and had already been granted by the DR before she gave her last decision. That, the same was granted without any other additional order like to make amendment to the main application as a whole. In the circumstances, he argued, this Court, Kamuzora, J. did not give a new order of excluding the deceased because that order had already been granted by the Deputy Registrar.

He further cited section 96 of the **Civil Procedure Code**, Cap 33 R.E. 2019 (CPC) and argued that, clerical or arithmetical mistakes can be cured or corrected by the court on its own motion or by applications from any of the parties. He prayed that, this application be dismissed with cost. Rejoining, Mr. Lengai mostly reiterated his earlier submission and prayed that this application be granted.

Having considered parties' affidavits and their rival submissions the main issue for determination is whether the raised points are sound points worth to be determined by the Court of Appeal. Generally, for this court to exercise its discretion to grant or refuse leave to the applicants, the latter is required to demonstrate that, the intended appeal raises arguable issues of general importance or novel points of law or an arguable appeal. There are plethora of authorities to that effect i.e. **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 133 of 2004; **Rutagatina C.L. vs The Advocates Committee & Another**, Civil Application no. 98 of 2010 (all unreported) and many more.

In doing the above prescribed duty, I will traverse through applicants' intended grounds of appeal in order to determine if at all they raise the arguable issue of general importance or novel point of law or arguable appeal to be considered by the Court of Appeal.

Reading between the lines on the intended grounds of appeal they are all centred on one or two things to wit; the presence of the deceased name on the front page of the DR's ruling and this Court's Order of its exclusion after declaring it a typing error. In her decision regarding this issue, Kamuzora, J. held as follows;

*"It is in record that upon receiving information on the death of the 2nd Judgment Debtor, the Respondent's counsel prayed before DR for exclusion of his name from the proceedings and the prayer was granted, see page 6 of the proceedings. **I do not agree with the argument by the counsel for the Applicants that the Respondent was ordered to amend the pleadings. The court only allowed his prayer to exclude the name of the 2<sup>nd</sup> Judgment Debtor among the names of the Judgment Debtors and no order for amendment was made.** In that regard, the submission in support of bill of costs and the ruling thereto was supposed to be made against the surviving Judgment Debtors. It is unfortunate that in her ruling, the DR included the name of the 2<sup>nd</sup> Judgment Debtor in the list. **I consider this error as a slip of pen and does not in itself vitiate the ruling by DR. I say so because, having allowed the prayer to exclude the 2<sup>nd</sup> Judgment Debtor, it was not intentional to include that name in list of Judgment Debtors.** That error can be considered as error in face of record which could have been rectified on prayer by either of the parties. Since no prayer was made, I direct the exclusion of the name of the 2nd Judgment Debtor from the title of the ruling of DR dated 21<sup>st</sup> September 2022."* (Emphasis added)

This excerpt clearly shows that, the issue of excluding the late Daudi Kirikengori as part of this matter or rather his abatement had already been prayed for, discussed and granted by this Court. In the circumstances,




applicants' grievance has already been dealt with in extensio and I find no need to bother the Court of Appeal with this issue any further. I hold so because had the parties not been satisfied with the prayer to exclude the deceased, they would have addressed this issue then in their reference. However, even in their reference subject to this application, applicant's grievance was the fact that the deceased name still appeared while there was an order to exclude the same. I therefore do not see any prima facie arguable point of law that needs Court of Appeal's attention.

In the upshot, applicants' application is hereby dismissed with cost for want of merit.

It is accordingly ordered.

**DATED** and delivered at **ARUSHA** this 3<sup>rd</sup> day of November, 2023



  
J.C. TIGANGA  
JUDGE