

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE SUB-REGISTRY OF MANYARA)

AT BABATI

MISC. CIVIL APPLICATION NO. 24 OF 2023

(Originating from Civil Appeal No. 8 of 2023 Hon. Kahyoza, J.)

HERMAN PETRO TORONTIAPPLICANT

VERSUS

AGASTO JAPHARY KIDAULA.....RESPONDENT

Date of last order: 29/2/2024

Date of Ruling: 8/3/2024

RULING

MAGOIGA, J.

The applicant filed the present application under section 5(1)(c), (2)(c) of the Appellate Jurisdiction Act [CAP 141 RE 2019], (hereinafter referred to as the AJA), seeking the following reliefs;

- 1. That this honourable court be pleased to certify that there is a point of law worth consideration by the Court of Appeal of Tanzania against the judgment and decree on appeal of the High Court of Tanzania Civil Appeal No. 8 of 2023 delivered on 16/6/2023.*



2. That, this honourable court be pleased to grant leave to the applicant to file appeal to the Court of Appeal of Tanzania against the judgment and decree on appeal of the High Court of Tanzania in Civil Appeal No. 8 of 2023 delivered on 16/6/2023.

3. That costs be in due course.

4. That, any other relief this honourable court may deem necessary to serve the interest of justice.

The application is being supported by an affidavit sworn by the applicant himself. On the other hand, the respondent filed a counter affidavit to contest the application. The application was disposed of by way of written submissions as both parties appeared in person and unrepresented.

Before going to the merits or otherwise of the application at hand, there are two important legal issues to be resolved pertaining to the application at hand. First leave to appeal to the Court of Appeal against the decision of this court is no longer mandatory requirement in light of Legal Sector laws



(Miscellaneous Amendments) Act 2023 which came into force on 1/12/2023 through GN No. 48 of 2023. It amended several laws including AJA whereby the whole of section 5(1) of the AJA was amended to remove the requirement for leave against all decisions of this court in the exercise of original, appellate or revisional jurisdiction. This means that a party aggrieved with the decision of this court whether in the exercise of its appellate, original or revisional jurisdiction has an automatic right to appeal to the Court of Appeal. Hence no need for leave.

It is without doubt that the amendments envisaged above came into force after the application at hand was filed in court. But since AJA is a procedural law, then such amendments operate retrospectively. This position was underscored in the case of **Felix H. Mosha and another v Exim Bank Tanzania Limited** Civil Reference No. 12 of 2017 Court of Appeal of Tanzania at Dar es Salaam (unreported) in which on page 7 the Court of Appeal observed thus;

We are mindful of the position of the law that when an amendment of the law affects a procedural step of matter only, it acts retrospectively unless good



reason to the contrary is shown."

The similar position was further underscored in the case of **The Director of Public Prosecutions v. Jackson Sifael Mtares & Three Others**, Criminal Appeal No. 2 of 2018 Court of Appeal of Tanzania at Dar es Salaam (unreported) in which the Court held that;

Normally, it may not be made to apply retrospectively where the said legislation affects the substantive rights of the "potential victims of that new law. On the other hand, however, if it affects procedure only, prima facie it operates retrospectively unless there is good reason to the contrary"

Therefore, guided by the above decisions, the leave relief sought by the applicant has been overtaken by operation of law brought by the amendments referred above. Therefore, determining whether the applicant has advanced reasons for the court to grant him leave serves no purpose.

Secondly, the applicant is seeking certificate that a point of law is involved in order for him to appeal to the Court of Appeal. I have considered the



background giving rise to the application at hand and I am of the settled view that no certificate that a point of law is involved is needed.

The reason for my decision is not farfetched. The requirement for this court to certify that a point of law is involved is provided for under section 5(2)(c) of the AJA. The said provision reads;

No appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High Court certifies that a point of law is involved in the decision or order;

From the foregoing provision, the requirement that a point of law is involved is only for matters covered under head (c) part III of the Magistrates' Courts Act [CAP 11 RE 2019], (hereinafter referred to as the MCA). Head (c) of part III to the MCA cover the decisions of this court in matters arising from the primary court. In other words where any party is aggrieved by the decision of this court on matters originating from primary court one has to seek certificate that a point of law is involved in order to appeal to the Court of Appeal.



In the instant matter, the applicant intended to appeal against the decision of Katesh Primary Court but he was late, hence he filed an application for extension of time vide Misc. Civil Application No. 16 of 2022 before Hanang' District Court which dismissed the said application for want of merits. Being aggrieved with the said decision denying him an extension of time, the applicant preferred Civil Appeal No. 8 of 2023 to this court which also dismissed the appeal for want of merits.

From the above brief background, there is no requirement that certificate on point of law is involved because the decision of this court which the applicant intends to challenge does not arise from the decision of the district court in the exercise of its appellate or revisional jurisdiction but in exercise of its original jurisdiction. What the applicant was required to do after being aggrieved with the decision of this court was to file an appeal to the Court of Appeal against the decision of this court in Civil Appeal No. 8 of 2023.

That said and done, I find the application misconceived and improperly before this court and the same is struck out with no order as to costs.

The applicant, if wishes to pursue the matter, may file an application to this



court for extension of time to appeal to the Court of Appeal.

It is so ordered.

Dated at Babati this 8th March 2024



[Handwritten signature]

S. M. MAGOIGA
JUDGE
08/03/2024