

IN THE HIGH COURT OF TANZANIA

(MOROGORO SUB - REGISTRY)

AT IJC MOROGORO

MISC. APPLICATION NO. 62 OF 2023

(Arising from PC Civil Appeal No. 5 of 2023 High Court of Tanzania Morogoro delivered on 13th of February, 2023.)

AMANI MAMBWETA..... APPLICANT

VERSUS

GIDION MORICE..... RESPONDENT

RULING

21st of February 2024.

L. MANSOOR, J.

The applicant in this application is the layman and thus the stated prayers in the chamber summons are coached in a layman language. In essence the application is intended for this Court to certify that there is a point(s) of law involved in the impugned decision which needs intervention and determination by the Court of Appeal of Tanzania (the CAT) filed under section 5 (1) (c) of the Appellate Jurisdiction Act [Cap. 141 R. E, 2019] (the AJA)

The applicant is intending to challenge the decision of this Court (Malata, J.) in Civil Appeal No. 05 of 2023 delivered on 13th of October 2023.

The application is made by way of a chamber summons supported by an affidavit sworn by the applicant which gives the grounds thereof. On the other hand, respondent, Gideon Morice vehemently opposed the application.

During the hearing of the application, by consensus, parties agreed to dispose of the application by way of written submissions, and the applicant Amani Mambweta appeared personally and unrepresented while Mr. Bartalomew L. Tarimo, the learned advocate entered appearance for the respondent.

It is only the applicant who has complied with the scheduling order fixed by the Court. He lodged his submissions in chief on 23.01.2024; quite timely. Up to the moment I was composing this ruling, well after the expiry of the time fixed within which the respondent could have filed his written submission, he had not filed them.

In the circumstances, I am not constrained to decide the instant application without the advantage of the arguments of the respondent.

However before delving into the submissions of the applicant, I have noted an irregularity in the chamber summons which goes to the root of the application itself. Looking at the chamber summons, it is crystal clear that, this application has been preferred under section 5 (1) (c) of the

Appellate Jurisdiction Act [Cap]. 141 R. E, 2019] which is currently amended by section 10 the Legal Sector Laws (Miscellaneous Amendments) Act 2023. However, looking at the prayers in the chamber summons even though they are couched in a layman language the applicant wanted this court to certify the points of law for him to assail away with the decision rendered by this court in Civil Appeal No.05 of 2023.

It is a general law that, appeals originating from Primary Courts are governed by section 5 (2) (c) of the Appellate Jurisdiction Act [CAP. 141 R. E, 2019] which requires the party to obtain a certification on the point of law. The law says,

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

The aspects covered under Head (c) of Part III of the Magistrates Courts Act, Cap 11 R.E. 2019 are those relating to the exercising powers of the High Court on revisional and appellate mandate for matters originating from Primary Courts.

Coming to the matter at hand, the applicant is intending to challenge the decision of this Court which was entered by my learned brethren Hon. Malata, J., in the exercise of his second appellate jurisdiction on a matter which originated from Kihonda Primary Court in Civil Case No. 20 of 2022.

In my view, the learned counsel for the applicant have wrongly cited the provision of section 5 (1) (c) of the Appellate Jurisdiction Act, he should have cited the provision of section 5(2)(c) of the Appellate Jurisdiction Act. In the circumstance, this application has suffered from wrong citation, and hence improperly before me and before this Court as the same is misconceived.

Having so stated, the next question is what then is the fate of this application? In numerous cases, this Court has held that wrong citation of the law or rule, renders the application Incompetent. [See: **Edward Bachwa & 3 Others v. The Attorney General & Another, Civil Application No. 128 of 2006**, (CAT) (unreported), **China Henan International Co-operation Group v. Salvand K.A. Rwegasira** (2006) TLR 220, 221 and **Alice Mselle v. The Consolidated Holding Corporation**, Civil Application No. 11 of 2002 CAT (unreported)].

I am of a settled view that this is a fundamental matter which goes to the root of the matter. Section 5(2)(c) of the Appellate Jurisdiction Act is the

foundation upon which application to certify the point of law is made. Once the application is based on wrong legal foundation, it is bound to collapse.

On the strength of the authorities cited above, I am satisfied that wrong citation of provision of the law in the chamber summons by the applicant as exhibited above, amounted to a fundamental procedural error which renders the application to be incurably defective, hence incompetent before the Court. I therefore, struck out the application with no orders as to costs, since the respondent failed to adhere to the scheduling orders fixed by the court.

It is so ordered.

DATED AND DELIVERED AT MOROGORO THIS 21ST DAY OF

FEBRUARY, 2024




(LATIFA MANSOOR J)

JUDGE

21.02.2024