

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 308 OF 2015
(ORIGINATING FROM COMMERCIAL CASE NO. 75 OF 2012)

M/S ROBERT ADVERTISEMENT LIMITED.....APPLICANT

VERSUS

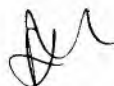
THE DIRECTOR, DODOMA MUNICIPAL
COUNCIL.....RESPONDENT

RULING

Mansoor, J:

Date of RULING- 22nd APRIL 2016

The judgment of the Court was delivered by MANSOOR J. on 13th October 2015, against the Applicant herein. This is an application for leave to appeal by the Applicant against the



decision of the High Court, Commercial Division in Commercial Case No. 75 of 2012.

The applicant is aggrieved by the decision and is now seeking for leave to appeal to the Court of Appeal on the grounds set forth by Mr Ntobesya, the learned counsel appearing for the Applicant. The Counsel, addressed the Court and gave very elaborate arguments to show that the conclusion arrived at by the High Court, Commercial Division in Commercial case No. 75 of 2012 is not correct. He has argued that the Court erred in law and in fact by holding that the Agreement between the parties were enforceable since the rate of the levy agreeable in the Agreement, the rate of 20% was outdated or repealed, and the applicable rate was 2.5%, but the Court continued to enforce the repealed rate of 20%. He also argued that the court erred in law and in fact by granting the whole amount claimed in the counter claim while the amount was not satisfactorily proved by the respondent when presenting the case on the counter claim, that the court erred in law and in fact by failing to consider that it was the respondent who breached the



agreement by failing to honor clause 23 of the Agreement, and that the court erred by making its finding based on weak evidence of the respondent.

The obvious reply to all these arguments advanced by the learned counsel for the applicant, by Counsel Kambona is that the Applicant has not been able to show the points of law worth the consideration of the Court of Appeal, and has only shown that the High court was wrong in its findings of facts, and if the Applicant would be given leave it would mean to allow the facts and the evidence of the case to be reopened, by the Court of Appeal. She said for leave to be granted the principle is that the grounds raised must be of issues of general importance, or novel points of law or prima facie case necessitating the intervention of the Court of Appeal. She relied on the holding of the case of **Buckay vs Holmes (1926) All ER No. 90** at page 91.

I have heard the submissions of the parties, and I shall say that the grounds of which the Applicant seeks to challenge the decision of the High Court are all grounds of facts in which the



High Court reached its conclusions in regard to the issues raised in the case based on the credibility of witnesses who have been believed by the trial Court which had the advantage of seeing them and hearing their evidence.

In the present case if leave is granted and in arguing the appeal, the Applicant would reopen the entire case and the appellant will be free to contest all the findings of fact and raise every point which could be raised in the High Court during Trial, which he had a chance to raise but did not do so. This is entirely unwarranted.

It is trite law and as stated in the case cited by the Counsel for the Respondent that the Court cannot give leave to appeal where the grounds suggested could not sustain the appeal itself; and, conversely, it cannot allow an appeal on grounds that would not have sufficed for the grant of permission to bring it.

The rule laid down by the Courts in the case cited by the Counsel for the respondent is based on sound principle, and,

A handwritten signature in black ink, appearing to be a stylized 'J' followed by a horizontal line.

in my opinion, only those points can be urged at the appeal and an appeal shall lie to the Court of Appeal from any judgment, decree or final order of the High Court, whether in a civil, criminal or other proceeding, if the High Court, during the stage of granting leave is satisfied that the case involves a substantial question of law as to the interpretation of the law, and that the reasons advanced as grounds of appeal raises questions of general importance or novel points of law, and of course not issues of facts or evidence. Another, may be that, the facts of the case are suitable as a foundation for determining some question of general principle or general importance. Conversely, the fact that leave to appeal is given is not of itself an indication that the judgments below are thought to be wrong. It may well be that leave is given in order that the relevant law may be authoritatively restated in clearer terms. There is no such necessity of restating any law in clear terms shown in the grounds of the appeal stated by the applicant warranting the intervention of the Court of Appeal.



One more thing I have observed is that, as for grounds no. 1 that the Court authorized the rate of 20% as Hotel Levy instead on 2.5 % is totally untrue and misleading. Leave cannot be granted to the applicant on the ground that the applicant had made inaccurate, untrue and misleading statements in the arguments for Leave. The Applicant had made certain wholly untrue statements in his argument regarding the rate of Hotel Levy. The rate used in reaching an amount awarded in the Counter Claim was 2.5 % and not the 20% which was repealed, as argued by the Counsel for the Applicant. Again, the Court made a thorough reasoning as to why the Agreement was enforceable since the rate used was not 20% but 2.5%.

It is of utmost importance that in making material statements and setting forth grounds in applications for leave, care must be taken not to make any statements which are inaccurate, untrue and misleading. In dealing with applications for leave, this Court takes statements of fact and grounds of facts contained in the application at their face value and it would

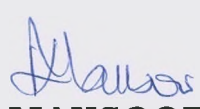
A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

be unfair to betray the confidence of the Court by making statements which are untrue and misleading.

This Court does not consider the grounds advanced by the Applicant as grounds for appeal to be fit grounds for exercising the court's discretionary jurisdiction to grant leave to the Applicant to appeal to the Court of Appeal, as the grounds stated are not grounds of novel points of law, they are not grounds of issues of general importance or novel points of law necessitating the intervention of the Court of Appeal.

Based on the above reasoning, the Application is therefore dismissed with costs.

DATED at DAR ES SALAAM this 22ND day of APRIL, 2016


MANSOOR
JUDGE
22ND APRIL 2016

