

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA
(COMMERCIAL DIVISION)
AT DAR-ES-SALAAM**

MISC.COMMERCIAL APPLICATION NO.33 OF 2021

(Made under Commercial Application No.167 of 2014)

MS FARHIA ABDULLAH NUR APPLICANT

VERSUS

ADVATECH OFFICE SUPPLIES LTD1st RESPONDENT
BOLSTO SOLUTIONS LTD.....2nd RESPONDENT

Last Order: 13/ 09/2021
RULING: 15/10/2021

RULING

NANGELA, J.:

The application at hand was filed by the Applicant under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap.141 R.E 2019, and the Ruling and Order of this Court in Misc. Comm. Appl. No.125 of 2020. It is brought against the two Respondents, and the Applicant is seeking for the following orders:

- (a) That, the Honourable Court be pleased to grant leave to the Applicant to Appeal to the Court of Appeal of Tanzania against the ruling and orders of the High Court of Tanzania, Commercial Division, at Dar-es-



Salaam, dated 03rd May 2017, in
Commercial Case No.167 of 2014.

(b) Costs of the Application be provided for.

The Respondent contested the application by way of filing a counter affidavit on the 15th April 2021. On the 5th day of August 2021, the Respondents appeared through their advocate, one Mr Daniel Ndossi. The applicant's learned advocate did not appear in Court. This Court gave orders that the application be disposed of by written submissions. A schedule of filing was issued and the parties have duly complied with that schedule. In the first place, I will examine such written submissions.

Submitting in support of the application, Mr Deogratias Lyimo Kiritta, learned advocate for the Applicant, submitted that the Applicant is seeking the leave of this Court to appeal against the ruling and order of this Court dated 03rd May 2017 in Comm. Case No.167 of 2014. Mr Kiritta further relied on the pleadings filed in this Court and the skeleton argument which he adopted as forming part of his submission.

Mr Kiritta submitted that, although the Respondent filed a counter affidavit, the same has acknowledged that the Applicant is not the Judgment Debtor in respect of Commercial case No.167 of 2014. He argued that, the Respondent has not as well disputed the facts that the 2nd Respondent is the Judgement Debtor and that the 1st Respondent has never executed the Decree against the 2nd Respondent. He urged this Court to grant the application since there are pertinent



legal issues which deserves consideration and determination by the Court of Appeal as the purported default judgement in Commercial Case No.167 of 2014 was not in conformity with the requirement of Order XX rule 4 and 5 of the Civil Procedure Code, Cap.33 R.E 2019.

In his skeleton argument, the Applicant's legal counsel has as well submitted that, there will be a ground regarding the legality of the order of the Court intended to be appealed against. He contended that, the issues which have been raised in the affidavit supporting the application reveal pure points of law and/or points of law and facts that need to be brought to the attention of the Court of Appeal.

As I stated, the Respondent contested the application. According to the learned counsel for the Respondents, leave can only be granted where the appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. He relied on the case of **Harban Haji Mosi and Shauri Haji Mosi vs. Omar HilalSeif and Seif Omar, Civil Reference No.19 of 1997** (unreported), to support his submission.

Mr Ndossi, the advocate for the Respondent, submitted that, challenging the default judgment by Order XX rules 4 and 5 of the Civil Procedure Code, Cap.33 R.E 2019 is undermining the vision and mission of this Court. What I may deduce from the submission by the Respondents and their counter affidavit



is that, the application should not be granted for lack of the reasonable chances of succeeding.

After looking at the parties' submissions and the pleadings filed in this Court, the only issue I am called upon to address is whether it is appropriate to grant the prayers sought. Ordinarily, an application like this one at hand can only be granted if there is good reason to do so, often a sufficient point(s) of law.

In the case of **Rutatigana C. L vs. The Advocate Committee and Another**, Civil Application No.98 of 2010 (unreported), the Court of Appeal stated that:

"An application for leave is usually granted if there is good reason, normally a point of law or point of public importance that calls for this Court's intervention. Indeed, on the aspect of leave to appeal, the underlying principle was well stated by this Court in **Harban Haji Mosi and Another v Omar Hilal Seif and Another, Civil Ref.No.19 of 1997 (unreported)** thus: 'Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole, reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose



of the provision is, therefore, to spare the Court the spectre of unmeriting matters and to enable it to give adequate attention to cases of true public importance."

I have looked at the applicant's submissions and the affidavit in support of it, in particular paragraph 26 of that affidavit. In my view, the points noted in that paragraph of the Applicant's affidavit, constitute sufficient issues of law for which the attention of the Court of Appeal may be drawn. As such I will not labour much to discuss the merits or otherwise of each of the points upon which reliance is being placed by the Applicant in her bid to have audience before the Court of Appeal. I am indeed convinced that, her application for leave should succeed.

In the upshot, pursuant to section 5 (1) (c) of the Appellate Jurisdiction Act Cap 141 R.E 2019, and in the exercise of its discretion, this Court hereby grants the Applicant leave to appeal to the Court of Appeal subject to the laid down laws and procedure. This application, therefore, is granted with costs.

It is so ordered.

**DATED AT DAR-ES-SALAAM ON THIS
15TH OCTOBER 2021**




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DEO JOHN NANGELA
JUDGE