

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA
(COMMERCIAL DIVISION)
AT MWANZA**

MISC.COMMERCIAL APPL. No.01 OF 2022

*(Arising from Commercial Appeal Case No.1 of 2021, Original
Case No.16 of 2018 of Nzega District Court, at Nzega)*

SUSAN SAMSON NAKEMBETWA..... APPLICANT

VERSUS

IMPERIUM INSURANCE

BROKERS CO. LIMITED 1st RESPONDENT

RESOLUTION INSURANCE CO.LTD 2nd RESPONDENT

Last Order: 03/06/2022
Date of Ruling 08/06/2022

RULING

NANGELA, J.:

This ruling is in respects of an application for leave to appeal to the Court of Appeal. The same has been brought under section 5(1) (c) of the Appellate Jurisdiction, Cap.141 R.E 2019. The application was filed by way of a chamber summons supported by an affidavit of the Applicant.

Briefly, the Applicant in seeking for the following orders of this Court:

1. That, this Court be pleased to grant the Applicant leave to appeal to the Court of Appeal of Tanzania against the decision in

respect of Commercial Appeal Case No.1 of 2021 delivered by Hon. C.P Mkeha, J., on the 23rd day of February 2021 in the High Court of Tanzania, Commercial Division, at Mwanza on the ground that there is a points of law fit for determination by the Court of Appeal if Tanzania to wit:

- *That, the trial Court and the first appellate court are perverse by basing on erroneous evaluation of evidence adduced before the trial Court which, if properly evaluated and analysed proves the claims at the required standards of preponderance of probability.*
2. That, costs of the Application be provided for.
 3. That, this Court be pleased to grant any other relief(s) as may deem fit and/or just.

The application was uncontested as no counter affidavit was filed in Court. Moreover, on the date of its hearing, the Respondent did not show up. The Applicant, however, was represented by Learned Advocate Mr Elias Subi, holding brief for Mr Musa Chemu, learned advocate. In his submission Mr Subi submitted that, the Application is unopposed and the ground for which leave is sought to appeal to the Court of Appeal of Tanzania is one worth of bringing to the attention of the Court of Appeal as this Court and the trial Court failed to

properly evaluate the evidence laid before them, hence, leading to a failure of justice.

He contended, as a matter of principle, that, where there is documentary evidence, oral evidence cannot be substituted for it. According to Mr Subi, that fact is itself enough a point of law worth bringing to the attention of the Court of Appeal. He submitted that, in principle granting leave to appeal to the Court of Appeal is a matter which is at the discretion of this Court, provided that there is a point of law which the Court of Appeal will be invited to address. He relied on the cases of **Nurbhai N. Rattansi vs. Ministry of Water Construction, Energy, Land and Environment and Another** [2005] TLR 220 and the English case of **Buckle vs. Holmes** [1926] All ER. 91 and urged this Court to grant the application with costs.

As correctly submitted by Mr Subi, granting of an application for leave to appeal to the Court of Appeal is at the discretion of the Court. Leave will be granted if the Applicant has demonstrated that there is an arguable case or where there is a viable point of law or an issue of general importance. The case of **Rutagatina C.L vs. The Advocates Committee and Clavery Mtindo Ngalapa**, Civil Application No.98 of 2010 (unreported) and **British Broadcasting Corporation vs. Eric Sikujua Ng'imaryo**, Civil Appl.No.138 of 2004 are all relevant on that.

In this particular application, the issue which the Applicant has brought to the attention of this Court is about failure on the part of both the trial Court and the first appellate Court to properly evaluate the evidence before it, thus allowing oral evidence to substitute for documentary evidence. Mr Subi has submitted that, such issue is itself a sufficient ground which will entitle the Court of Appeal to intervene. Indeed, failure on the part of any Court to evaluate the evidence laid before it will constitute an arguable point of law for which the attention of the Court of Appeal may be drawn.

In view of the above, this Court settled for the following orders:

1. That, leave to appeal to the Court of Appeal is hereby granted subject to the requirements laid down by the appropriate laws and procedures pertaining to filing of an appeal at the Court of Appeal.
2. That, costs follows the event.

It is so ordered

**DATED AT MWANZA ON THIS 08TH DAY OF JUNE,
2022.**




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**HON. DEO JOHN NANGELA
JUDGE**