

THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA

**(COMMERCIAL DIVISION)**  
**AT DAR ES SALAAM**

MISC. COMMERCIAL APPLICATION NO.97 OF 2022  
(Arising from Misc.Comm.Appl.No.176 of 2021, Originating from  
Commercial Case No. 116 of 2016)

HIRJI ABDALLAH KAPIKULILA.....APPLICANT

VERSUS

NCBA BANK LIMITED SUCCESSOR

(Successor in the title of the defunct

NIC BANK LIMITED) .....RESPONDENT

Last Order: 26/10/2022

Date of Ruling: 04/11/2022.

**RULING**

**NANGELA, J.:**

This is an application for leave to appeal to the Court of Appeal Tanzania. The application was filed under Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 and Rule 45 (a) of Tanzania Court of Appeal Rules, 2009 (as amended). It arises from Commercial Case No. 116 of 2016. The Applicant seeks for the following:

1. This Honourable Court be pleased  
to grant leave to the applicant to  
appeal to the Court of Appeal

against the decision of the Honourable Court dated 19<sup>th</sup> May 2022 which dismissed the applicant's application for extension of time to file an application to set aside dismissal order dated 7<sup>th</sup> October, 2021 in respect to the applicant's counter claim in Commercial Case No. 116 of 2016.

2. That, cost of this application be provided for.
3. Any other relief(s) that this Honourable Court may deem just, fit and equitable to grant.

When the parties appeared for orders on the 04<sup>th</sup> of October 2022, the Applicant was unrepresented and, thus, appeared in person. He informed this Court that his advocate was indisposed and has requested that the matter be disposed of by way of written submissions. Mr. John Laswai, learned advocate who appeared for the Respondent did not contest the

payer and this Court proceeded to grant it. The parties have filed their submissions and, thus, from such submissions which I have considered, I proceeded to prepare this ruling.

Briefly stated, the Applicant's has contended that, this Court erred when it dismissed Misc.Appl.No.176 of 2021 which was seeking for extension of time to set aside dismissal orders issued on the 7<sup>th</sup> October 2021 in respect of counterclaim case No.116 of 2016.

Essentially, the Applicant has contended that, the dismissal was made on a date when the matter was fixed for mention and, relying on the case of **Shengena Ltd vs. National Insurance Corporation and Another, Civil Appeal No.9 of 2008 (unreported)** as well as the case of **British Broadcasting Corporation (BBC) vs. Eric Sikujua Ng'imaryo**, Civil Appl. No.133 of 2004 (unreported), he has urged this Court to grant the application.

For her party, the Respondent, through the services of her advocate, has contested the application and submitted that,

the Applicant has not been able to convince this Court why leave should be granted.

It has been argued that the decision of the Court in Misc. Commercial Appl. No.176 of 2021 was made in exercise of its discretion based on the materials presented before the Court. It was also submitted, taking into account the decision of the Court of Appeal in **National Bank of Commerce vs. Maisha Musa Uledi (Life Business Centre)**, Civil Appl. No.410/07 of 2019, (unreported) that:

“in an application for leave to appeal, what is required of the Court hearing such an application is to determine whether or not the decision sought to be appealed against raises legal points which are worth consideration by the Court of Appeal.”

Reliance was as well placed on the case of **British Broadcasting Corporation (BBC) vs. Eric Sikujua**

**Ng'imaryo**, (supra). Many other cases were relied upon which I need not refer to here. It suffices to note that, the Respondent has urged this Court to decline from granting the prayers. In a brief rejoinder the Applicant's counsel reiterated the submission made in chief urging this Court to grant the prayers sought.

The issue I am called upon to address is whether I should grant the prayers sought by the applicant. As a matter of principle, an application of this kind is granted at the discretion of the Court, naturally, exercised judiciously having been satisfied that there are cogent legal grounds worth of being brought to the attention of the Court of Appeal.

In the **BBC's case** (supra), the Court of Appeal, was of the view that:

"As a matter of general principle,  
leave to appeal will be granted  
where grounds of appeal raise  
issues of general importance or  
novel point of law or where the  
grounds show a prima-facie or

arguable appeal. (See *Buckle v Holmes* (1926) All ER 90 at page 91). However, where the grounds of appeal are frivolous or useless or hypothetical, no leave will be granted.”

The same point was reiterated in the case of **Rutatigana C.L vs. The Advocate Committee and Another**, Civil Application No.98 of 2010 (unreported). In that case, the Court of Appeal was of the views 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."

With that in mind, the question that follows is whether the application at hand has exhibited such features pointed out in the **BBC's case** (supra) or **Rutagatina's case** (supra). I have carefully read the submissions made by the Applicant's counsel and I am indeed convinced that, the Applicant has an arguable case or ground befitting this Court to grant him leave to appeal to the Court of Appeal.

In particular, the ground is whether the dismissed application was properly dismissed taking into account the

decision of the Court of Appeal in Shengena's case and whether that decision apply to the circumstances of the dismissed application for which leave is sought to appeal against its orders.

In view of the above, this Court settles 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 being said, this application succeeds with costs.

**It is so ordered.**

DATED AT DAR-ES-SALAAM ON THIS 04<sup>th</sup> DAY OF  
NOVEMBER 2022





*John Nangela*

**DEO JOHN NANGELA**  
**JUDGE**