

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

MISCELLANEOUS COMMERCIAL APPLICATION NO. 198 OF 2022

(Arising from Commercial Reference No.6 of 2022)

**MOHAMED BUILDERS LIMITED.....APPLICANT
VERSUS
LAKE STEEL AND ALLIED PRODUCTS LIMITED.....RESPONDENT**

RULING


Date of last order : 13/12/2022

Date of ruling: 15/12/2022

A.A. MBAGWA J.

This ruling is in respect of the application for leave to appeal to the Court of Appeal against the ruling of this court in Commercial Reference No.6 of 2022 dated 21st of October, 2022 before (Hon. Magoiga J). The applicant was not amused by the decision of this court and therefore she is determined to challenge it in the Court of Appeal. However, as per the requirement of law, an appeal of this nature cannot be pursued before the Court of Appeal unless leave of the court is sought and granted hence this application.

The application is by way of chamber summons made under section 5(2)(a)(ii) of the Appellate Jurisdiction Act [Cap. 141 R.E.2019] and it is supported by an affidavit sworn by Nixon Tugara, learned advocate for



the applicant. The applicant prays this court to grant the following orders;

- i. That this honorable court be pleased to grant leave to appeal to the Court of Appeal of Tanzania.
- ii. Costs of this application.
- iii. Any other or further orders as the court shall deem fit.

In contrast, the application was contested by the respondent through a counter affidavit sworn by Lulu Mbinga, learned advocate for the respondent.

The applicant intends to fault the decision of this court in Commercial Reference No. 06 of 2020 in which it partly allowed the reference. The main grievance of the applicant is on the court's interpretation of order 48 of the Advocates Remuneration Order, 2015, GN. No. 263 published on 17/07/2015.

At paragraph 6 of the affidavit, the applicant raised five issues which she intends the Court of Appeal to consider namely;

- i) Whether the interpretation of the High Court of order 48 of the Advocates Remuneration Order GN. No. 263 of 2015 was correct.

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- ii) Whether the High Court Judge was correct to depart from the decisions of three Judges of the High Court.
- iii) Whether the High Court Judge had justifiable legal reasons to depart from the decision of three fellow Judges of the High Court.
- iv) Whether the High Court Judge applied properly order 48 of Advocates Remuneration Order GN. No. 263 of 2015 by partly disallowing the bill and largely upholding the remaining bill.
- v) Whether the costs to be disallowed in taxation automatically excludes costs billed for instruction fee and disbursement.

When the matter was called on for hearing, the applicant was represented by Yohana Ayall and Nixon Tugara, learned advocates whilst the respondent defaulted appearance despite being duly served. Consequently, the court ordered the hearing of the matter to proceed *ex parte*.

Mr. Yohana Ayall did not have much to tell the court on the hearing day. He simply adopted the affidavit in support of the application and skeleton arguments which he had filed earlier on 8th day of December, 2022 to form part of his submission. He thus implored the court to

consider the applicant's affidavit and the skeleton arguments and consequently allow the application.

In his skeleton arguments, the applicant's counsel contended that this matter involves triable issues of law which call for consideration by the Court of Appeal. In a bid to amplify his argument, the applicant's counsel submitted that there is a plethora of decisions by this court to the effect that where one-sixth ($1/6$) of the total amount bill of costs exclusive of the court fees is taxed off, then the party presenting the bill for taxation should not be granted costs of such taxation. He lamented that in the said reference, the Hon. Judge upheld the decision of the taxing officer which granted the respondent costs despite the fact that more than one-sixth of the costs claimed was taxed off.

The applicant's counsel was thus opined that there is an arguable issue with regard to the correct interpretation of order 48 of the Advocates Remuneration Order, 2015. To bolster his submission, he cited the case of **British Broadcasting Corporation vs Eric SikujuaNg'maryo**, Civil Application No. 138 of 2004, CAT at Dar es Salaam where the Court granted leave to appeal after it was persuaded that there were rival contentions of the parties which required authoritative interpretation of the Court of Appeal. In sum, the applicant's counsel beseeched the court

to find the application meritorious and consequently grant leave to appeal.

I have keenly gone through the depositions of both parties and the skeleton arguments filed by the applicant's counsel. I also had an occasion to canvass the decision of this court which is sought to be impugned. At page 5 and 6 of the said ruling, the Hon. Judge had the following to say;

'From the wording of the above provision of the law, which I find no ambiguity, I partly share the same view and considered stance by my learned brother and sisters' judges in their decisions cited by. Mr. Tugara that, of which I had time to read that, the consequences of claiming excessive claim renders the amount claimed in such taxation not to be granted. However, I partly part ways with my learned brother and sisters' judges that it affected the entire claim'

From this quote, it is undeniably common cause that there are divergent decisions of the High Court with regard to the interpretation of order 48 of the Advocates Remuneration Order, 2015.



Generally, leave to appeal is granted where the 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 **Bulyanhulu Mine Limited and 2 Others vs Petrolube (T) Limited and Another**, Civil Appeal No.364/16 of 2017, CAT at Dar es Salaam and **British Broadcasting Corporation vs Eric Sikujua Ng'maryo (supra)**.

The central issue therefore for determination in this application is whether the applicant has raised arguable issues of facts and or law worth consideration by the Court of Appeal. As hinted above, the applicant has demonstrated existence of diverse decisions of this Court on the interpretation of order 48. In addition, the applicant has established that this Court, in Commercial Reference No.6 of 2022, has given a different interpretation of order 48 from the previous decisions. Admittedly, it goes without saying that there is a need to have authoritative interpretation of the provisions of order 48 of the Advocates Remuneration Order by the Court of Appeal.

In view of the above, I am persuaded that the applicant's intended appeal raises arguable issues of law worth determination by the Court of Appeal. In the circumstances, I find the application with merits and

consequently I grant leave to the applicant to appeal to the Court of Appeal. I order no costs.

Dated at Dar es Salaam this 15th December, 2022.




A.A. Mbagwa

JUDGE

15/12/2022