

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA**

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 06 OF 2023
(Arising from Commercial Reference No.7 of 2022)

YARA TANZANIA LIMITEDAPPLICANT

VERSUS

DB SHAPRIYA & CO. LIMITED RESPONDENT

RULING

Last order: 17thMAY 2023
Ruling: 19thMAY 2023

NANGELA, J.

This application was brought to the attention of this Court by way of a chamber summons preferred by the Applicant under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap.141 R.E 2019; Rule 45 of the Court of Appeal Rules, 2009 (GN.368 of 2009 as amended); and section 95 of the Civil Procedure Code, Cap.33 R.E 2019.

The chamber summons is supported by affidavits of Mr. Nuhu Sadik Mkumbukwa and the Applicant seeks for the following orders:

1. That, this Honourable Court be pleased to issue the Applicant herein leave upon which to appeal to the Court of Appeal of Tanzania against the decision of this Court (Hon. A.A. Mbagwa, J.) in Commercial Reference No. 07 of 2022.
2. The costs of this application be provided for; and
3. Any other relief this Honourable Court deems jus and equitable to grant.

When the parties appeared before this Court on the 29th of March 2023, the Applicant enjoyed the services of Mr. Reuben Robert, learned advocate while Mr. Nobert Tarimo appeared for the Respondent. On the material date the parties were directed to have the matter heard by way of written submission and a schedule of filing the requisite submissions was issued. The learned counsels for the parties duly complied with the schedule

of filing and, on the 17th of May 2023 a date for the delivery of this ruling was set.

In his submission I support of the prayers sought, Mr. Robert urged this Court to grant the Applicant's prayers. His grounds were *inter alia* that, decisions of this Court on matters of taxation reference are appealable to the Court of Appeal of Tanzania and the impugned decision falls under section 5(1) (c) of the Appellate Jurisdiction Act, Cap.141 R.E 2019.

To support his contention, Mr. Rober placed reliance on the case of **Prakseda Barnabas (Legal Representative of Harrison Mandali and 9 Others vs. Registered Trustees of the Archdiocese of Dar-Es-Salaam**, Civil Application No.480/17 of 2020 (unreported).

Secondly, it was Mr. Robert's contention that, the application at hand has sufficiently exhibited grounds which constitute an arguable case before the Court of Appeal of Tanzania. He referred this Court to the grounds set out in paragraphs 11 to 16 of the supporting affidavit and argued that they present an arguable case before the Court of Appeal of Tanzania.

He contended that, the requirement that an Applicant must demonstrate an arguable case worth being brought to the attention of the Court of Appeal was highlighted in the case of **Lightness Damiani and 6 Others vs. Said Kasim Chageka**, Civil Appl. No.450/17 of 2020 (unreported); **Airtel Tanzania Ltd vs. KJM Telecom. Ltd**, Civil Appl. No.393/16 of 2021 (unreported) and **British Broadcasting Corporation Vs. Erick Sikujua Ng'imaryo**, Civil Appl. No. 138 of 2008 (unreported).

Based on those arguments which I have endeavored to summarize, the learned counsel for the Applicant urged this Court to grant the prayers sought by the Applicant. For his part, the learned counsel for the Respondent had a different position. He prayed that the present application be dismissed with costs.

In his submissions, the learned counsel for the Respondent adopted the contents of the counter affidavit as forming part of the submission filed in court and contended that, the Applicant has not been able to demonstrate points of law worth bringing to the attention of the Court of Appeal of Tanzania.

He contended that, matters addressed on paragraphs 11, 12, 13 and 14 of the affidavit supporting the application, were matters addressed by the High Court and therefore, that, the same matters should not be reopened by the Court of Appeal. He maintained, therefore, that, the Applicant has not been able to demonstrate grounds that warrant calling the attention of the Court of Appeal of Tanzania.

Mr. Tarimo submitted further that, appeal to the Court of Appeal of Tanzania is not an automatic thing but leave is required and for serious issues of law. To support his contention, he relied on the case of **Harban Haji Mosi and Another vs. Omary Hilai Seif and Another** [2001] TLR 409. He also contended that, the fact that a party is unsatisfied with the decision of the Court cannot constitute a sufficient ground for granting leave to appeal to the Court of Appeal. Reliance was put on the case of **Godwin Lyaki and Another vs. Ardhi University**, Civil Application No.491/01 of 2021 (CAT) (unreported).

As I stated earlier, the counsel for the Respondent has urged this Court to dismiss the application with costs.

Having considered the rival submissions, the issue for consideration is whether this Court should grant the prayers

sought by the applicant. For this Court to grant such prayers, however, the Applicant must convince it that the Applicant has demonstrated grounds which would sufficiently capture the attention of the Court of Appeal of Tanzania.

In the case of **Dorina N. Mkumwa vs. Edwin Davis Hamis**, Civil Appeal No.57 of 2017 (CAT) (unreported), for instance, the Court of Appeal of Tanzania was of the view that, unless a party has cogent grounds, this Court should not allow to be used as a conduit to pass through unmerited grounds of appeals to the Court of Appeal.

In the case of **Harban Haji Moshi and Another vs. Omari Hilal Seif and Another**, [2001] TLR 409, therefore, the Court of Appeal was clear that:

“Leave is grantable where the proposed appeal stands chances of success or where, but not necessarily, the proceedings ... reveal disturbing features as to require the guidance of the Court of Appeal. ...”

Similarly, in the case of **BBC vs. Eric Sikujua Ng'imaryo** (supra) the Court of Appeal was a further of the view that:

“leave will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a *prima facie* or arguable appeal...”

The question that follows, therefore, is whether the Applicant has demonstrated such grounds which would warrant granting the prayers sought.

In his submission, Mr. Tarimo stated that, the Applicant has failed to do so. For his part, however, Mr. Robert held a view that, paragraphs 11 to 16 of the affidavit supporting this application contain grounds which can sufficiently be brought to the attention of the Court of Appeal as they constitute an arguable case before the Court of Appeal. Paragraph 11 of the affidavit contain an annexure marked **Annex.7**, which is the intended Memorandum of Appeal to be filed at the Court of Appeal of Tanzania should leave be granted.

I have looked at the **Annex.7** to the affidavit and paragraphs 12 down to 16 of the Affidavit filed by the Applicant. In my view, I find that, the grounds contained in **Annex. 7** constitute, in my view, an arguable case, worth bringing to the

attention of the Court of Appeal for it to consider their merits.
For such a reason, I will allow the application and grant the
Applicant leave to file an appeal at the Court of Appeal of
Tanzania.

In the upshot of the above, this Court settles for the
following orders:

1. That, the Applicant is hereby
granted leave to appeal to the
Court of Appeal.
2. That, the granting of this
Application is with costs as
prayed.

It is so ordered.

**DATED AT DAR-ES-SALAAM ON THIS 19TH DAY OF MAY
2023**



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DEO JOHN NANGELA
JUDGE
