

**IN THE HIGH COURT OF UNITED REPUBLIC OF
TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
MISC. COMMERCIAL APPLICATION NO. 114 OF 2023**

COMMERCIAL BANK OF AFRICA (T) LTD..... APPLICANT
VERSUS
MIC TANZANIA LIMITED..... RESPONDENT

Last Order: 13/11/2023
Ruling: 14/11/2023

RULING

NANGELA, J.:

The application before me is one seeking for leave to appeal to the Court of Appeal of Tanzania. The Applicant seeks to challenge by way of an appeal, a ruling, and orders of this court, (Hon. Agatho, J.,) dated 23rd of June 2023.

The Applicant has brought the application by way of a chamber summons filed under 5 (1) (c) of the Appellate Jurisdiction Act, Cap.141 R.E 2019, Rule 45(a) (b) and Rule 46 (1) of the Court of Appeal Rules 2009 (as amended). The same is supported by an affidavit of Ms Elizabeth Chacha.

When the parties appeared before this Court on the 06th day of November 2023, Mr. Luka Elingaya and Peter Clavery, Advocates, represented the Applicant while Mr. Victor Kikwasi, Advocate, appeared for the Respondent. Mr. Kikwasi informed this Court that the Respondent does not intend to object to the prayers sought. As such, Mr. Elingaya address Court and urged this Court to grant the prayers sought by the Applicant.

I have looked at the prayers in the chamber summons and the supporting affidavit. Leave to appeal to the Court of Appeal is not an automatic right but will only be granted upon satisfaction of the conditions already laid down by the various decisions of this Court and the Court of Appeal. This is irrespective of whether the application before the court was challenged or not.

Decisions which have pointed out some of the conditions include the case of **Said Ramadhani Mnyanga vs. Abdallah Salehe** [1996] TLR 74; **Hamis Mdida and Siad Mbogo vs. Registered Trustees of Islamic Foundation**, Civil Appeal No.232 of 2018 (CAT) (at Tabora)

(unreported) and **BBC vs. Eric Sikujua Ng'imaryo**, Civil Appl.No.138 of 2004 (unreported).

In In the case of **Harban Haji Moshi and Another vs. Omari Hilal Seif and Another**, [2001] TLR 409, it was held, 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. The purpose of the provision is, to spare the Court the spectre of unmeriting matters and to enable it to give adequate attention to cases of true public importance.”

In the case of **BBC vs. Eric Sikujua Ng'imaryo** (supra) the Court of Appeal reiterated a similar view adding 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..."

In the matters before me, I am convinced, having
looked at the affidavit supporting the application that, there
are matters of legal concern which constitute an arguable
appeal and, hence, need to be brought to the attention of the
Court of Appeal. In view of that, this Court settles for the
following orders:

1. That, the Applicant is
hereby granted leave to
appeal to the Court of
Appeal.
2. That, costs of this
Application be in the cause.

It is so ordered.

**DATED AT DAR-ES-SALAAM ON THIS 14th DAY
OF NOVEMBER 2023**



John Nangela

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DEO JOHN NANGELA
JUDGE