

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

**MISC. LAND APPLICATION NO.435 OF 2021**

(Arising from Land Reference No.4 of 2021; Originating from Bill of Costs No.148 of 2019)

**CHARLES HANS KIRENGA.....APPLICANT**

**VERSUS**

**PETA MHOMA** (Administratrix of the estate of  
the late JUMANNE MHOMA) .....**RESPONDENT**

Date of Last Order: 21.03.2022

Date of Ruling: 04.04.2022

**RULING**

**V.L. MAKANI, J**

The applicant CHARLES HANS KIRENGA is seeking for leave to appeal to the Court of Appeal of Tanzania against the decision of this court in Reference No.4 of 2021. The application is under section 5(1) (c) of The Appellate Jurisdiction Act CAP 141 RE 2019 RE 2019, Rule 45 (a) of the Court of Appeal Rules,2009 as amended. The application is supported by the affidavit sworn by the applicant and the respondent has filed his counter affidavit in opposition.

The matter proceeded by way of written submissions. Submission on behalf of the applicant was drawn gratis by Mr. John Kambo,

Advocate and filed by the applicant. On the other hand Mr. Frank Chundu, Advocate drew and filed submissions in reply on behalf of respondent.

Mr. Kambo prayed to adopt the contents of the applicant's affidavit to form part of his submission. He said that in this matter there are points of law which attracts the intervention of the Court of Appeal of Tanzania. He said that the Ruling in the Bill of Costs No. 148 of 2019 was delivered on 4<sup>th</sup> day of June 2020. That the said ruling was tainted with illegalities for want of reasons for its decision and taxing the costs contrary to the mandatory requirement of the law as per the Advocates Remuneration Order, 2015, GN 262 of 2015 (the **Remuneration Order**). He said that the said illegality ought to be considered by Hon. Judge in the impugned ruling and hence he ought to grant the application. Counsel listed down the grounds which the applicants intend to prefer to the Court of Appeal. He said that, for the leave to appeal to be granted, the applicant has inter alia to show that there are good reasons normally on point of law. He relied on the case of **Rutagatina C.L vs. The Advocate Committee & Another, Civil Application No.133 Of 2004** (unreported). On that basis Counsel prayed for this application to be granted.

In reply Mr. Chundu, prayed to adopt the contents of the respondent's counter affidavit. He said that in an application for leave to appeal, the applicant is duly bound to point out legal points which are worth for determination by the Court of Appeal. He cited the cases of **Harban Haji Mosi & Another vs. Omar Hilaa Seif & Another, Civil Reference No. 19 Of 1997 (CAT)** (unreported) and the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo, Civil Application No.133 Off 2004** (unreported). He said that this application does not fall within the parameters of the cited authorities for want of prove of premafacie or arguable appeal. That the listed points of law at paragraph 16 of the applicant's affidavit does not fit in the authorities since this matter does not pose arguable appeal. He said the impugned decision was based on two key issues namely that the point of illegality which was not apparent on the face of the records and second that the applicant failed to account the delay as he did not specifically plead as to when he became aware of the decision he was about to challenge. He pointed out that it is very important to calculate the extent of delay in application for extension of time. He said under the claim of illegality there must exist special circumstances (points of law) and that the

said points have to be obvious at a glance. He relied on the case of **Ester Siliacus vs. Siliacus Marchory, Matrimonial Cause Application No.27 Of 2019** (unreported).

Mr. Chundu further said it is a correct position of the law that a point of law has to be on the face of the record worth to be considered in application for extension of time which does not entail long drawn arguments or process. He further said that in calculating extent of delay the applicant must disclose exact date he became aware of existence of the case against him. He relied on the case of **Abdul-Rahman Saleemen Islam vs. Africarriers Limited, Misc. Commercial Application No.203 Of 2018**. He insisted that the applicant has failed to show clear points worth for determination by the Court of Appeal but just mentioned them which can not suffice to warrant this court to grant the orders sought. He insisted that the applicant ought to have given clear details of the alleged points to enable this court to ascertain whether they are clear points of law worth for consideration by the court of Appeal of Tanzania. Counsel prayed for this application to be dismissed with costs.

The applicant did not file rejoinder submissions.

The guiding principle in granting application for leave to appeal to the Court of Appeal is found in the case of **Harban Haji Mosi & Another (supra)** where it was held that:

*“Leave is grantable where the proposed appeal stands reasonable chance s of success or where, but not necessarily the proceedings as a whole reveals 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 un meriting matters and to enable it to give adequate attention to cases of true public importance.”*

The same position was also started in the case of **British Broadcasting Corporation (supra)**.

The rationale behind application for leave is to spare the Court of Appeal of a lot of matters, which have no merit, and or which have already been dealt with by the lower courts. Granting of the application for leave to appeal is discretionary power of the court to be exercised judiciously, and the court must act on the materials before it. Those materials must be shown by the applicant both in the affidavit and the submissions in support of the application and the deficiencies so moving him to appeal must be clearly seen in the proceedings and the decision sought to be impugned. The applicant

must therefore demonstrate serious points of law worth for consideration by the Court of Appeal. The position was stated in the case of **Simon Kabaka Daniel vs. Mwita Marwa Nyang'anyi & 11 Others (1989) TLR 64.**

The points for which the applicant wants the intervention of the Court of Appeal are found in paragraph 16 of the applicant's affidavit as follows:

- (i) Whether taxation of instruction fee at a rate higher than that prescribed by the law amounts to illegality apparent on face of the record.*
- (ii) Whether failure to notify the respondent the date when the ruling was delivered constitutes sufficient cause to warrant extension of time.*
- (iii) Whether illegality in itself is sufficient cause to warrant extension of time.*
- (iv) Whether good cause was shown to allow extension of time.*

It is apparent from the above that the applicant is arguing that his intended appeal will mainly be grounded on grounds of illegality and lack of notice of the date on which the impugned decision was delivered. I have noted the submissions by Mr. Chundu that they extend to the merit of the intended appeal. It is worth noting that

granting of leave to appeal as earlier stated is the discretionary power vested on the court. And the aim is not to go into merit of the intended appeal.

I have given a careful look at the application and the affidavit in support thereof, as well as the submissions for and against the application, and I am of the considered view that the points which have been raised by the applicant and noted herein above are worthy the intervention of the Court of Appeal. In other words, the application has raised points arguable for an appeal before the Court of Appeal. In that regard I find the application at hand to have merit as it meets the conditions laid down in the cases of **Harban Haji Mosi & Another** (supra) and **British Broadcasting Corporation** (supra).

On the basis therefore this application for leave to appeal to the Court of Appeal is granted. Considering the nature of the application there shall be no order as to costs. It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**04/04/2022**

