

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

**MISC. LAND APPLICATION No. 513 OF 2023**

*(Arising from the Ruling and Order of the High Court of Tanzania (Land Division)  
at Dar es Salaam in Reference Application No. 27 of 2022 dated 27/04/2023 by  
L.Hemed, J)*

**NJOWOKA M. M. DEO.....1<sup>ST</sup> APPLICANT**

**AMIN ABDULRAHIM PREMJI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**MOHAMED MUSA OSMAN.....RESPONDENT**

**RULING**

*12/9/2023 & 20/9/2023*

**A. MSAFIRI, J**

This is a ruling on the Application whereby the above named applicants are seeking for the Court orders that they be granted leave to appeal to the Court of Appeal of Tanzania having been aggrieved by the decision of this Court in Reference No. 27 of 2022. The Application has been brought under Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019.

The Application has been taken at the instance of RoarBar Attorneys and is supported by an affidavit of Godwin Anthony Fissoo, counsel for the applicants and is contested by the respondent through

*Acils*

a counter affidavit of Mr Thomas Eustace Rwebangira, the counsel for respondent.

The Application was heard by way of written submissions and the submissions in chief and rejoinder by the applicants were drawn and filed by Mr Godwin Anthony Fissoo, learned advocate while the reply submission by the respondent was drawn and filed by Mr Thomas Eustace Rwebangira, learned advocate.

I commend both parties for their well-articulated submissions and the referred authorities which has greatly assisted this Court in determination of this matter. I have no intention of reproducing each words which were submitted but I will briefly narrate the history of the matter as per the pleadings and the submissions.

The respondent herein was awarded costs in Misc. Application No. 265 of 2021 which was before this Court and was withdrawn by the applicants who were also the applicants in the said Application. That on the first date of appearing, the applicants prayed to withdraw the Application whereby the respondent prayed for costs. This Court granted the prayer to withdraw but also granted costs to the respondent. *Alle.*

Following that, the respondent filed a bill of costs in Bill of Costs No.153 of 2021 before the Tax Master claiming to be reimbursed a total of Tshs 5,156,000/= but the Tax Master taxed the whole bill of costs to the tune of Tshs. 1,910,000/=. This aggrieved the applicants and they filed a reference No. 27 of 2022 before this Court among other grounds, stated that the bill taxed was contrary to Rule 48 of the Advocates Remuneration Order, 2015. This Court dismissed the Application for reference and now the applicants intends to knock the doors of the Court of Appeal on the matter.

In their submissions and the affidavit, Mr Fissoo, has stated that it is imperative that the application for leave to be granted as there are points of law to be discussed and determined by the Court of Appeal. He named the said points of law to be referred at paragraph 9 (9.1,9.2 and 9.3) of the affidavit supporting the Application.

Basing on that, the counsel for the applicants prayed for the Court to allow the Application and costs to follow the events.

The respondents vehemently contested the Application and their counsel Mr. Rwebangira submitted that the leave to appeal is not automatic but the applicant has to satisfy the conditions necessary for the grant of leave. He argued that the applicants have failed to show

*Acle.*

that there are important points of law necessary to be determined by the Court of Appeal. He argued further that the applicant did not appeal against the decision of this Court by Hon. Z.D. Mango, J which granted the costs but the purported points of law in the applicant's affidavit are attacking the decision of the Taxing Master instead of attacking the decision of the Judge on Reference as if the applicants intend to appeal direct against the decision of the Taxing Master.

Mr. Rwebangira stated that according to Section 5(1) (c) of the Appellate Jurisdiction Act, an appeal to the Court of Appeal with leave is supposed to be against the decision, order or any findings of the High Court, hence the grounds of appeal ought to be in respect of such decision. That, there is nowhere in the affidavit where it is demonstrated where the Hon. Judge who heard the reference made an error on point of law or facts worth to be taken to the Court of Appeal.

He prayed for the Application to be dismissed.

In rejoinder, the counsel for the applicants vehemently denied the arguments raised in the respondent's submission that the applicants intends to challenge the decision of the Taxing Master instead of the decision of the Judge on Reference. He said that the argument is misleading and not true as the issues which are specifically pointed out

*Aelle.*

in paragraphs 9 of the affidavit, none of them was discussed or even mentioned in the ruling of the Taxing Master. That it was the decision of the Judge which brought out the issue of Order 48 of the Advocates Remuneration Order, 2015 and the issue of one-sixth thereof. He reiterated his prayers that the Application has merit and it be granted.

Having gone through the submissions of parties in support and contest of the Application, the point for my determination is whether the Application has merits.

In an Application for leave like the present one, there are conditions to be considered before the leave to appeal can be granted. Such conditions were expounded in the decision of the Court of Appeal in **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo Civil Application No. 138 of 2004** (unreported). In that case the Court of Appeal stated that;-

*"Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must however be judiciously exercised and on the materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or*

*Adls.*

*where the grounds show a prima facie or arguable appeal (see: **Buckle vs. Holmes (1926)** ALL E. R. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical no leave will be granted."*

From the foregoing quoted decision, it is imperative to note that the grant of leave is not automatic but conditional in that it can only be granted where the grounds of the intended appeal raise arguable issues in the appeal before the Court. Furthermore, my duty in this Application is not to determine the merits or demerits of the grounds of appeal raised when seeking leave to appeal. Instead the Court has only to consider whether the proposed issues are embraced in conditions set out in **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo [supra]**.

The applicants are only required to show in their affidavit the arguable grounds for determination by the Court of Appeal, and in the affidavit supporting the Application at paragraph 9 (9.1-9.3) of the affidavit, the applicants have shown clearly the points of law which they intend to file before the Court of Appeal for determination. The said points of law are as follows; *Alls.*

- 1) What is one-sixth of the whole bill in question after excluding court fees?*
- 2) Whether or not by taxing master taxing the whole bill of Tsh.5,156,000/= is the respondent entitled to the costs?*
- 3) Whether or not Rule 48 of the Advocate Remuneration Order, 2015 bars the taxing master to allow costs of the bill while the amount disallowed is more than one-sixth of the total bill presented exclusive of court fees.*

This Court's duty is only to consider whether the purported points of law advanced raises an arguable issue in the intended appeal. Having read the grounds raised at paragraph 9 (9.1-9.3) of the applicant's affidavit, I am satisfied that they are arguable points of law.

I have also considered the arguments by the counsel for the respondents that the points of law are not challenging the decision of the Hon. Judge in the Reference but rather they are challenging the decision of the Taxing Master. It is Mr. Rwebangira's views that it is as if the applicants intends to appeal direct against the decision of the Taxing Master.

In determining this argument by the respondent through his counsel, I have read the decision of this Court by my learned brother Hon. Hemedi, J in Reference Application No.27 of 2022. I have satisfied myself that the issues which have been raised at paragraph 9 of the

*Acle*

affidavit were argued during the hearing of the said Reference as it is shown at page 4 of the impugned decision.

In upshot, I find the Application to have merit and I accordingly grant it. The applicant shall have to file the intended appeal within the required time as per the law. Costs shall follow events in the intended appeal.

Order accordingly.



**A. MSAFIRI**  
**JUDGE**  
**27/10/2023**



THE HIGH COURT OF KENYA  
LAND DIVISION