

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA
MISC. CIVIL APPLICATION NO. 43 OF 2022**

ELIAS AMOS KASHETO APPLICANT

VERSUS

DAVID JUMANNE SABATO RESPONDENT

RULING

27/2/2023 & 26/5/2023

ROBERT, J:-

The applicant, Elias Amos Kasheto, seeks certification of this Court that a point of law is involved in the decision of this Court (PC Civil Appeal No. 66 of 2021) regarding a matter originating from the Primary Court of Nansio which the applicant intends to challenge by way of appeal to the Court of Appeal of Tanzania. The application is supported with an affidavit sworn by the applicant.

Briefly, facts relevant to this application reveals that, parties involved in this application initially entered into a sales agreement for the transfer of a motor vehicle spare parts shop. Pursuant to the agreement, the applicant sold the aforementioned shop, inclusive of its spare parts, at the

price of TZS 8,000,000/=. Subsequently, the parties reached an oral agreement wherein the respondent provided the appellant with TZS 3,000,000/= to facilitate the purchase of additional spare parts for the shop from Dar es salaam. Regrettably, the applicant failed to fulfill the agreed-upon obligation to procure the spare parts.

In September, 2020, the applicant decided to terminate the original sale of the shop and assured the respondent of the repayment of the purchase price TZS 8,000,000/=: the expense incurred by the respondent in obtaining the necessary documents from the Tanzania Revenue Authority to operate the shop business TZS 500,000, and the funds provided by the respondent for the spare parts purchase TZS 3,000,000/=. Unfortunately, the applicant failed to fulfill the promised amount, leading the respondent to initiate legal proceedings against him at the Primary Court of Nansio claiming a total of TZS 18,500,000/= being a total of the claimed amount (TZS 11,500,000/=) and damages for termination of contract TZS 7,000,000/=. The trial Court passed judgment in favour of the respondent and ordered the applicant to pay TZS 8,500,000/= as the other claims were not proved. Aggrieved, the applicant appealed unsuccessfully to the District Court of Ukerewe. Still aggrieved, he preferred an appeal to this Court which was dismissed with

the requirement of Stamp Duty Act (exhibit P1). He maintained that, this was a point of law which this court was required to deliberate on according to section 47 (i) and 5th schedule of the Stamp Duty Act.

He made reference to the case of **Halid Maulid vs Republic, Cr Appeal No. 94/2021**, CAT at Dodoma (unreported) where the Court of Appeal stated at page 6 that:-

"It is settled in this jurisdiction that on second appeal this court will only look at the matters which came out of the first appellate court and were decided. The court has no jurisdiction to decide on matters which were not raised nor decided by the High Court or subordinate court with extended jurisdiction in second appeal unless they are point of law."

Based on the position above, he maintained that, it was wrong for the court not to decide on a matter which had a point of law. Thus, he prayed for this application to be allowed with costs.

In response, Mr. Revocatus adopted the contents of the respondent's affidavit and proceeded to argue that, this application has no point of law worth of determination by the Court of Appeal. He maintained that, the High Court was right to refuse to deliberate on the 4th ground of appeal because it was a new ground which was not raised in the District Court. It could not form a ground of appeal in the High Court.

He contended that the case of **Halid Maulid** (supra) was the position of the Court of Appeal and the cited statute (Stamp Duty Act) gives exemption by stating that admission cannot be refused just because a document has no stamp duty. Hence, this is not a serious legal matter which need to be considered by the Court of Appeal. Hence, this being the only ground and of less seriousness it is not worthy of determination by the Court of Appeal. To buttress his argument, he referred the Court to the case of **Erasto Daima Sanga vs Peter Mwonga**, Misc. Land Appeal No. 66 of 2019). In the end, he prayed for this application to be dismissed with costs.

Rejoining to this, Mr. Mwanaupanga reiterated the arguments in his submissions of chief and maintained that, admission of exhibit P1 which is the subject of this legal point could have been admitted in exceptional circumstances. However, he didn't specify the provision of law allowing such admissions.

With regards to the position in the case of **Erasto Daima** (supra) he argued that, it is irrelevant in the circumstances of this case because in that case there were no sufficient ground to grant leave to appeal to the Court of Appeal. Thus, he prayed for this application to be allowed.

The application raises the issue of whether the Honorable Judge's refusal to entertain the 3rd and 4th grounds of appeal because they were new grounds of appeal constitutes illegality deserving of the Court of Appeal's determination. The applicant's counsel argues that it was improper for the Judge not to deliberate on the 4th ground of appeal, which faulted the trial court for admitting a document (exhibit P1) that did not meet the requirements of the Stamp Duty Act.

Upon careful consideration of the arguments presented, it is essential to address the legal principles governing the determination of an error on a point of law which constitutes illegality. Not every error on a point of law constitutes illegality, as established in the case of **Lyamuya Construction Limited vs Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2020 (unreported). The Court of Appeal, in the case of **Charles Richard Kombe vs Kinondoni Municipal Council**, Civil Reference No. 13 of 2019, CAT at Dar es Salaam, clarified that for a decision to be attacked on grounds of illegality, it must be successfully argued that the Court acted illegally by lacking jurisdiction, denying the right to be heard, or the matter being time-barred.

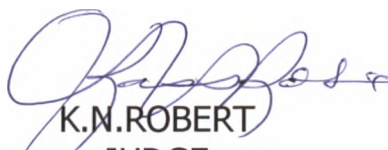
In the present case, the applicant's argument rests on the alleged illegality of the Honorable Judge's refusal to entertain the 4th ground of appeal. This ground challenges the trial court's admission of a document (exhibit P1) that purportedly did not meet the requirements of the Stamp Duty Act. However, the applicant fails to demonstrate that this refusal constitutes illegality within the defined parameters.

After careful evaluation of the arguments and authorities presented, this Court finds that the applicant has failed to establish a substantial point of law worthy of determination by the Court of Appeal. The alleged illegality stemming from the Honorable Judge's refusal to entertain the 4th ground of appeal lacks merit and does not fall within the established criteria for attacking a decision on grounds of illegality.

Therefore, in light of the foregoing analysis, this Court concludes that the application lacks a substantial point of law justifying certification for appeal to the Court of Appeal of Tanzania. Accordingly, the application is dismissed with costs.

It is so ordered.




K.N. ROBERT
JUDGE
26/5/2023

