

**IN THE HIGH COURT OF THE UNITED REPUBLIC  
OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR-ES-SALAAM  
MISC. COMMERCIAL APPLICATION NO.56 OF  
2021**

AFRIQ ENGINEERING & CONST. CO. LTD ...APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF THE  
DIOCESE OF CENTRAL TANGANYIKA.....RESPONDENT

Date of Last Order: 09/09/2021.

Date of Ruling: 01/10/2021.

**RULING**

**NANGELA, J.:**

The Applicant herein has applied, by way of a chamber summons brought under section 70 (4) of the Arbitration Act, 2020 (currently section 74 (4) of Cap.15 R.E 2020), and section 5(1) (c) of the Appellate Jurisdiction Act, Cap.141 R.E 2019, as well as Rule 45(a) of the Tanzania Court of Appeal Rules, 2009, Cp.141 R.E 2019, for the orders that:

1. Leave be granted to the Applicant to appeal to the Court of Appeal against the

ruling/decision of the High Court (Dr. Nangela, J.) given at Dar-es-Salaam on 14<sup>th</sup> April 2021 in Consolidated Misc. Commercial Cause Nos.4 and 9 of 2020.

2. Costs of the application be borne by the Respondent; and
3. The Hon. Court be pleased to grant such other order(s) it may deem fit and just to grant.

The chamber summons has been supported by an affidavit of Eng. Charles Bilinga, who is a shareholder and Managing Director of the Applicant. On 30<sup>th</sup> June 2021, the Respondent contested the application by filing a counter affidavit.

On the 18<sup>th</sup> of August 2021, I made an order that the application be disposed of by way of filing written submissions and a schedule of filing was fixed. The parties complied dutifully and, I will, thus, embark on analysing their submissions.

In his submission Mr Michael Ngalo who represents the Applicants submitted, in regard to the correct and relevant law upon which the chamber summons was brought, that, section 70 (4) of the Arbitration Act 2020 (should be read as section 74 (4) of Arbitration Act, Cap.15 R.E 2020) on the ground

that, the Applicant filed the application relying on the first version of the law and was unaware of the revised edition of the Act issued on 30<sup>th</sup> April 2020.

Addressing the factors which would entitle a Court to grant an application for leave to appeal, Mr Ngalo submitted that, leave to appeal to the Court of Appeal is not automatic but that it is granted at the discretion of the Court, upon analysis of the materials brought before it to see if they contain issues merited for consideration by the Court of Appeal.

To support his submission, Mr Ngalo has cited the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'imaryo**, Civil Appl. No 133 of 2004 (unreported). He, thus, invited this Court to analyse the affidavit supporting this application and make a finding regarding whether it contains points of law worth bringing to the attention of the Court of Appeal for its determination.

According to Mr Ngalo, paragraphs 19, 20, 22 and 23 of the supporting affidavit, do disclose such legal issues worth of bringing to the attention of the Court, and, for that matter, this Court is urged to grant the application.

As for his part, Mr Dennis Malamba who appeared for the Respondent submitted that, the Applicant has

not advanced sufficient grounds to warrant the granting of leave to appeal to the Court of Appeal, as the decision made by this Court was intact. He contended that leave is granted only when there is a point of law to move the Court of Appeal.

Mr Malamba argued that, the point of law cannot be that, the decision of this Court was based on the new law (Act No.2 of 2020) and not its revised edition, 2020. He submitted that, the principle behind granting leave is as stated in the **BBC's case** (supra). He submitted, however, that, exercise of Court's discretion to grant or not to grant such leave must be done judiciously.

He argued further that, the findings of the Court as reproduced under paragraphs 18, 19, 20, 21 and 22 of the supporting affidavit cannot constitute points of law which warrant consideration by the Court of Appeal as they do not have a novel issue. That being said, he argued that, the Applicant has no chances to succeed in his endeavours as there is no serious point of law warranting the intervention of the Court of Appeal.

On the 3<sup>rd</sup> of September 2021, Mr Ngalo filed a rejoinder. He reiterated his views that, as officers of the Court, the learned counsels had a duty to bring to the attention of this Court the revised edition of the law. As

regards there being grounds upon which leave should be granted, Mr Ngalo submitted that, it was erroneous and misleading to argue that, the application does not raise a novel issue of law worth bringing to the attention of the Court of Appeal.

Mr Ngalo submitted that, paragraph 23 of the Applicant's supporting affidavit, contain proposed points of law of great importance and which present an arguable case before the Court of appeal. He further contented that, since the Arbitration Act is new, it has brought to light novel aspects of arbitration which would warrant or invite authoritative interpretation of the Court of Appeal since the decision of this Court may or may not be correct. He thus urged this Court to grant the Applicant leave to appeal.

Having gone through the respective submissions made by the learned counsel for the parties herein, the issue I am called upon to address is whether the Applicant has disclosed points of law which would warrant the intervention of the Court of Appeal.

In principle, and as correctly submitted by the learned counsel for both parties, the granting of an application for leave to appeal to the Court of appeal is not automatic but rather, largely depends on the discretion of the Court, which, however, must be

exercised judiciously. The **BBC's case** (supra), cited by both parties in their submission is a relevant authority to that point.

Moreover, in the case of **Rutatigana C.L v The Advocate Committee and Another**, Civil Application No.98 of 2010 (unreported), the Court of Appeal was of the views that:

"An application for leave is usually granted if there is good reason, normally a point of law or point of public importance that calls for this Court's intervention. Indeed, on the aspect of leave to appeal, the underlying principle was well stated by this Court in **Harban Haji Mosi and Another v Omar Hilal Seif and Another, Civil Ref.No.19 of 1997 (unreported)** thus: 'Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole, reveal 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 unmeriting matters and to enable it to give adequate attention to cases of true public importance."

According to Mr Ngalo, the gist of this current application is disclosed in paragraphs 19, 20, 22 and 23 of the supporting affidavit of the applicant. He contended that, these contain or reveal legal issues worth bringing to the attention of the Court of Appeal and which, prima facie, may give victory to the Applicant.

For his part, however, Mr Malamba is opposed to what Mr Ngalo submitted and has argued that the paragraphs do not constitute any novel or legal issues worth bringing to the attention of the Court of Appeal.

Having looked at the submissions and the affidavit of the Applicant, I am of a different opinion. To me, the issues raised by the Applicant, especially in paragraph 23 of the affidavit are purely legal issues for which the attention of the Court of Appeal may be invited.

Having said so, I see no reason why I should not grant the Applicant leave to have his legal grievances addressed by the Court of Appeal. I have been asked as well to grant costs to the application. In my view I will not grant costs in this application. I will assign only two reasons for that:

first, the decision aggrieved of, and for which leave to appeal against it is being

sought by the Applicant, is not the making of the Respondent.

Second, the decision to seek for leave to appeal is a right of a litigant under the law and that cannot come at the expense of the Respondent.

In the upshot, pursuant to section 74 (4) of the Arbitration Act, Cap.15 R.E 2019 and section 5 (1) (c) of the Appellate Jurisdiction Act Cap 141 R.E 2019, and in the exercise of its discretion, this Court hereby grants the Applicant leave to appeal to the Court of Appeal subject to the laid down laws and procedure.

This application, therefore, is granted with no orders as to costs.

**It is so ordered.**

**DATED AT DAR-ES-SALAAM ON THIS  
01<sup>TH</sup> OCTOBER 2021**



A handwritten signature in blue ink, appearing to read "Deo John Nangela". The signature is written over a horizontal dotted line.

**DEO JOHN NANGELA  
JUDGE**