

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT SHINYANGA

MISC. CIVIL APPLICATION NO. 01 OF 2016

(Arising from Tabora (DC) High Court Civil Appeal No. 22 of 2015, originating from Civil Case No. 3 of 2014 at Shinyanga Resident Magistrate)

Jackson Mboje----- APPLICANT

VERSUS

Nshoma Ng'wela ----- RESPONDENT

RULING

Ebrahim, J.:

Jackson Mboje, the Applicant has filed an application in this court praying to be granted leave to appeal to the Court of Appeal following his dissatisfaction with the decision of this Court on appeal dated 29th September, 2015.

The application has been filed under **Section 5(1) (c) of the Appellate Jurisdiction Act, CAP 141, RE 2002 and Rule 45(a) of the Court of Appeal Rules 2009 G.N. 368**. The application is supported by the affidavit of Jackson Mboje, the applicant.

The application was heard exparte following the ruling of this court on sustaining the 3rd ground of preliminary objection raised by the applicant on defective counter-affidavit.

When the application was called for hearing, the applicant who appeared in person submitted on the reasons for the present application being that the appeal was heard exparte hence there was no rival arguments. He faulted the appellate judge that the decision based on the judge's views while it was only him (the applicant) who was heard and he proved his case. Thus he should be allowed to go to the Court of Appeal.

The law i.e. **Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 RE 2002** provides that an appeal against the decision or order of the High Court shall lie to the Court of Appeal with the leave of High Court or Court of Appeal.

An application for leave is usually granted on discretion of the court upon showing good reason or where the proceedings as a whole reveal such disturbing features that call for intervention of the Court of Appeal. The underlying principle was stated by the Court of Appeal in the case of **Rutagatina C.L Vs The Advocates Committee & Another**, Civil

Application No 98/2010 (Unreported) that quoted with authority the case of **British Broadcasting Corporation vs Eric Sikujua Ng'maryo**, Civil Application No. 133 of 2004 (unreported) which stated as follows:-

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

The essence of leave is to ensure that the Court of Appeal is saved from the specter of unmeritorious matters, so that it can use its time on matters of public importance, law, and or contentious issues that need guidance of the Court of Appeal.

I have thoroughly gone through the affidavit of the applicant and I have also considered his submissions in court. The applicant stated in his affidavit that he seeks to challenge the fact that the trial court struck out his case for not disclosing a cause of action. However, in his submissions

he says that the appellate judge based his decision in his own views whilst the application was unopposed.

With respect to the applicant it is not automatic that once the matter is heard *ex parte* then the decision must be on that person's favor. Hearing the case *ex parte* does not exclude a party with onus of proof to prove the same on the required standard.

As a general rule, in application for leave, the court has to exercise its judicial discretion from the materials presented before it.

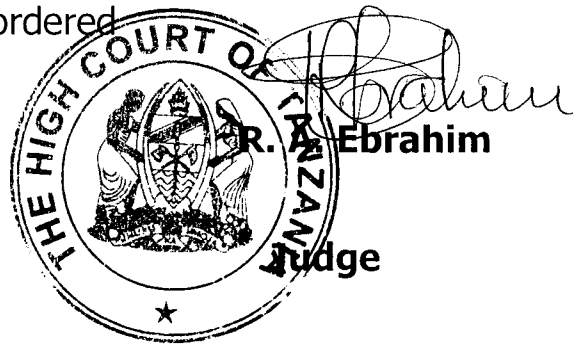
The applicant is claiming that the appellate judge worked on his own views to decide the case. However, going through the judgement of my brother Judge Rumanyika, he went through the decision of the trial court which decided on the preliminary stage that the plaint filed by the applicant herein did not disclose cause of action. He noted also that the documents tendered to be relied by the applicant to prove his case could not establish cause of action. He further added the issue of joinder and misjoinder of parties.

That beside the point, the applicant's case at District Court was struck out for not disclosing a cause of action which the same cannot be

rectified by filing litany of cases and series of appeal, but utilize the avenue to file a proper suit.

That being said, I am of the firm view that the application does not disclose any contentious issue to warrant the intervention of the Court of Appeal. I accordingly dismiss the application. I give no order as to costs.

Accordingly ordered



Shinyanga

14.12.2019

Date: 14/12/2018

Coram: Hon. S. P. Mwaiseje, DR

Applicant: Present in person

Respondent: Absent

B/C: Raymond, RMA

Court: Ruling delivered today 14th day of December, 2018 in the presence of the Applicant and Raymond, RMA. In the absence of the Respondent.

Court: Right of Appeal fully explained.

