

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. CIVIL APPLICATION NO.145 OF 2020

*(Arising from the Judgment of the High Court of Tanzania at Mwanza in Civil
Appeal No.02 of 2019 dated 23/10/2020 Hon. Manyanda, J)*

VIETEL TANZANIA LIMITED..... APPLICANT

VERSUS

**ASA GENERAL SUPPLIES &
CONSTRUCTION CO. LTD RESPONDENT**

RULING

Date of Last Order: 12.03.2021

Date of Ruling: 12.03.2021

A.Z.MGEYEKWA, J

This application is brought under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] and Rule 45 (a) of the Court of Appeal Rules, 2009 as amended and section 95 of the Civil Procedure Code Cap. 33 [R.E 2019]. The applicant seeks leave to appeal to the Court of Appeal of Tanzania to impugn the decision of this Court in Civil

Application No.02 of 2020 delivered on 23rd October, 2020. The application is supported by an affidavit deponed by Joseph Kinango. On the other hand, the respondent opposed the application by filing a counter affidavit deponed by, Mr. Edward John, learned counsel.

Following the global outbreak of the Worldwide COVID - 19 pandemic (Corona virus), the hearing was conducted via audio teleconference, the applicant enjoyed the legal service of Mr. Kinango, learned counsel and the respondent was represented by Edward John, learned counsel.

It was Mr. Kinango who started to kick the ball rolling. He urged this court to adopt the applicant's affidavit and form part of his submission. Mr. Kinangi was brief and straight to the point. He urged this court to grant the applicant's application. He went on to state that the reasons for leave to appeal are stated on paragraph 5 whereas the applicant has raised arguable grounds which merits the attention of the Court of Appeal of Tanzania.

The learned counsel for the respondent strenuously resists the application through the counter affidavit as well as in the oral arguments at the hearing before me. Mr. Edward contended that not every application for leave is meritorious. He argued that the District Court and High Court determined the matter in favour of the respondent. Mr. Edward valiantly

argued that the appellant purposely wants to delay the respondent's rights to proceed with execution. Insisting, Mr. Edward argued that the respondent since 2015 has suffered. Mr. Edward went on to state that the respondent on paragraph 6 of the counter affidavit has stated that a Notice of Appeal to the Court of Appeal is filed at the Court of Appeal of Tanzania. He strongly argued that if this application will be granted the respondent will suffer irreparable loss.

On the strength of the above conclusion, Mr. Edward beckoned upon this court to dismiss the application with costs.

Rejoining, Mr. Kinango reiterated his submission in chief and valiantly argued that this court did not uphold the decision of the District Court. He went on to state that the trial court awarded the appellant Tshs. 50,000,000/= and this court ruled out that the appellant is entitled to Tshs. 25,000,000/= as general damages. It was his submission that they want to challenge the decision of the award of general damage.

Regarding the notice of appeal, Mr. Kinango argued that the Notice of Appeal is already before the Court of Appeal of Tanzania court. He argued that the issue of the respondent's loan is a new issue the same was raised at the trial court and there is no link between the said loan with the instant case.

On the strength of the above submission, Mr. Kinango, beckoned upon this court to grant leave to the applicant to file an appeal before the Court of Appeal of Tanzania.

Having heard the submissions of the learned counsel for the applicant and the respondent for and against the application, I will determine *whether the application is meritorious*. It is trite law that leave to appeal to the Court of Appeal is granted if prima facie grounds are meriting the attention of the Court of Appeal as it was held in the case of **Sango Bay v Dresdner Bank A.G** [1971] EA 17, it was held that:-

*"Leave to appeal will be granted where **prima facie** it appears that there are grounds which merit serious judicial attention and determination by a superior Court."*

Similarly, in the case of **Gaudensia Mzungu v IDM Mzumbe**, Civil Application No. 94 of 1994 (unreported), the Court of Appeal of Tanzania held that leave will be granted if, prima facie there are grounds meriting the attention and decision of the Court of Appeal. Accordingly, the case referred to me must be looked at its context rather than authority against the success of the intended appeal. Howbeit, my reading of the decision reveals that Resident Magistrate Court with extended jurisdiction ordered a retrial after noting that the dispute in regard to the signature of the

second respondent was not resolved. In the case of **British Broadcasting Corporation v Erick Sikujua Ng'amaryo**, Civil Application No. 138 of 2004 the Court of Appeal of Tanzania at Dar es Salaam (unreported) held that:-

" 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... "

I have noted that on paragraph 5 of the applicant's affidavit, the applicant's Advocate has raised arguable issues which they want to bring it to the attention of the Court of Appeal of Tanzania such as whether the discretion to award general damages were exercised judiciously and whether it was proper for this court to award general damages while there was no breach of contract.

Guided by the cited authorities, without expressing any opinion, I am satisfied that the ground raised is embraced in conditions set in the cases of **British Broadcasting** (supra). The applicant has demonstrated sufficient ground to invoke the appellate jurisdiction of the Court of Appeal of Tanzania. In order to ensure that justice is done, there is need for the Court of Appeal of Tanzania to resolve the rival contentions raised by the learned counsel for the applicant on the point of law on whether the

general damages were exercised judiciously. I do not think this and other grounds raised in the applicant's affidavit are not serious enough to be determined by the Court of Appeal.

In the upshot, I will, in the circumstances, exercise my discretion under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] and grant leave to appeal to the Court of Appeal of Tanzania.

Order accordingly.

DATED at Mwanza this 12th March, 2021.




A.Z MGEYEKWA

JUDGE

12.03.2021

Ruling delivered on 12th March, 2021 via audio teleconference whereas Mr. Kinango, learned counsel for the applicant and Mr. Edward, learned counsel were remotely present.


A.Z MGEYEKWA

JUDGE

12.03.2021