

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

MISC. CIVIL APPLICATION NO. 155 OF 2021

(Arising from the judgment and Decree of the High Court of Tanzania Mwanza at Mwanza Hon. K. Ismail, J. dated 16.11.2021 in Civil Appeal No. 11 of 2021 original civil Case No. 50 of 2015)

NATIONAL INSURANCE CORPORATION (T) LTD-----APPLICANT

VERSUS

LEONIDA LAURIAN (Prob. Admin of the Late

ELIZABETH KAMSOKA) -----1st RESPONDENT

REVOCATUS BALASASA LUHIZA (Prob. Admin of

the Late BARAKA REVOCATUS BASASA)-----2nd RESPONDENT

GABRIEL K. MWERA -----3rd RESPONDENT

RULING

Last Order: 19.07.2022

Ruling Date: 26.07.2022

M. MNYUKWA, J.

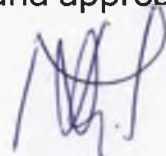
This application is brought under Section 5(1)(c) of the Appellate Jurisdiction Act, Cap. 141 RE: 2019. The applicant sought leave to appeal to the Court of Appeal against the decision of this Court delivered on 16th November 2021 before Hon. M.K. ISMAIL, J. The applicant's application is



supported by an affidavit sworn by Kabyemela S. Lushagara, a chief legal officer of the applicant.

Briefly, it goes thus, before the Resident Magistrate court of Mwanza, the 1st and 2nd respondents instituted a case against the applicant and the 3rd respondent claiming for the sum of 4,100,000/- as special damage and Tshs 55,000,000/- as general damages as a result of the accident that claims the loss of lives and expectations due to the death of the victims to whom the respondents are administrators. At the trial court, it was held that the case was made against the defendants jointly and severally and they were held culpable of the alleged wrongdoing. The specific damage was awarded as claimed and the general damages was awarded at a tune of 1,500,000/=. Both sides were dissatisfied with the court decision. The respondents were not satisfied with the grant and filed an appeal to this court while the plaintiffs' were dissatisfied with the massive reduction of the general damages and ended up filing a cross-appeal.

Before this court, the appeal fails and the cross-appeal filed partly succeeded to the extent that the general damages for the 1st and 2nd respondents were altered and ordered that be paid an aggregate of Tshs. 35,000,000/=. The applicant did not see justice and approached this court



invoking section 5(1)(c) of the Appellate Jurisdiction Act Cap 141 RE: 2019

whereas on his chamber summons he prays for the following: -

- 1. That the honourable court be pleased to grant Leave to the Applicant to Appeal to the court of Appeal of Tanzania.*
- 2. Costs of this application to be provided for.*
- 3. That the court be pleased to grant any other relief it deems fit and equitable to grant.*

When the matter was called for hearing before me, the applicant learned counsel urged this court to proceed *exparte* against the 3rd respondent who has always been absent and the 1st and 2nd respondents who filed their counter affidavit but did not enter appearance. This court dully granted the prayer and the matter proceeded *exparte* against all respondents.

Mr. Marco Nsimba learned counsel submitted that, this application is against the decision of this court in Civil Appeal No 11 of 2021 before Hon. Ismail J. dated 16 November 2021 whereas in terms of section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141, RE 2019 the applicant is required to file this application. He prays to adopt his affidavit to form part of his submissions.



Referring to the case of this court of **Brighton Mponji (the Administrator of the late THEODORA MASHEYO) vs Simon Paul**, Misc. Land Application No. 708 of 2020, he avers that it is the requirement of law that for the leave to be granted, the applicant must satisfy the court that there are legal and factual issues for determination by the Court of Appeal. He went on citing paragraphs 14(a) to (g) of his affidavit insisting that they are contentious issues of law that need the attention of the Court of Appeal. Insisting, he also refers this court to the case of **Said Ramadhani Muyanga vs Abdalah Saleh** [1996] TLR 75, insisting that his affidavit contains a contentious point of law. he retires prays this application to be granted and costs to follow the event.

Having keenly reviewed the depositions in the applicant's affidavit specifically on paragraphs 14(a) to (g) the applicants aver that there are points of law that attract the attention of the Court of Appeal. In the case of **Harban Haji Mosi and Another vs. Omar Hilal Seif and Another**, Civil Reference no 19/1997 CAT in which the following principles were laid down that;-

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as a whole reveals such disturbing feature 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"

Also the authority in the case of **British Broadcasting Cooperation vs Erick Sikujua Ng'maryo** Civil Application No.138 of 2004 (CAT) - Dar Es Salaam (Unreported) it was held inter alia 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 should 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 where the grounds show a prima facie or arguable Appeal...However, where the grounds of Appeal are frivolous, vexatious, useless or hypothetical, no leave will be granted."

As it is settled, issues with such disturbing features proving that there would be an arguable appeal which must be shown by the applicant both in his affidavit and the submissions.

Going to the applicant affidavit specifically, at paragraph 14 (a) to (g) the applicant fronted the legal points which are to his averment, a proposed grounds of appeal to the Court of Appeal. Based on the



submissions of the counsel in support, it is my view that the following are the legal issues that may require the attention of the Court of Appeal:

- (a) The court that has jurisdiction to entertain matters involving specified public corporation.*
- (b) The issue of requirement for leave when the specified public corporation is sued.*
- (c) The validity of transferring the insurance policy before its expiration when the motor vehicle is sold to a third party.*
- (d) The joining of the applicant to the suit as a third party by the 3^d respondent without the plaint being amended by the 1st and 2nd respondents.*
- (e) The existence of the cross appeal and the time limitation of filing the same.*
- (f) Awarding the relief that were not prayed for*

The other issue like dismissal of the suit filed by the 1st and 2nd respondents will be dealt with when the Court determine the issue of jurisdiction. Likewise, the issue of cross appeal to be incorporated in the reply to the memorandum of appeal and the issue of counter claim will also be dealt with when the Court will determine the existence of cross appeal and the time limitation of filing the same.

As it is well known that the right to be heard is one among the rules of natural justice and a constitutional right under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, and since there is an



upper court where the matter can be heard, I hereby grant leave for the applicant to appeal to the Court of Appeal for the reasons above. I give no order as to costs.





M.MNYUKWA

JUDGE

26/07/2022

Ruling delivered on 26th July 2022 in the presence of the applicant
learned counsel and in absence of respondents.


M.MNYUKWA

JUDGE

26/07/2022