

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

MISC. CIVIL APPLICATION NO. 160 OF 2021

(Arising from High Court Civil Appeal No. 21 of 2021, from the Judgment of the High Court of Tanzania dated 29.9.2021)

SABINA YOHANA.....1ST APPLICANT

PAULO APOLINARY.....2ND APPLICANT

VERSUS

DOMINICAL PAUL.....1ST RESPONDENT

ROCK CITY TAKERS LTD.....2ND RESPONDENT

R U L I N G

21st July & 12th September, 2022

DYANSOBERA, J.:

This ruling is on an application for a certificate on points of law. It has been filed by the applicants herein and has been made under Section 5 (2) (c) of the Appellate Jurisdiction Act [Cap. 141 R.E.2019] and supported by the affidavit of the applicant. The application has been opposed by the respondents, through their counter affidavit filed on 23rd day of November, 2021.

The brief facts giving rise to this application are the following. The 1st respondent Dominical Paul, as administrator of the estate of the late Rahel Masalu, instituted before the Primary Court at Ndagalu a Civil Case No. 33 of 2016 claiming TZS 800,000/= as repayment of the loan. The suit was

against Sabina Yohana, the 1st applicant. The case was heard ex parte after the 1st applicant defaulted appearance. Apart from the claim of the said loan, the 1st respondent also claimed TZS 400,000/= as damages for costs allegedly incurred by him in making a follow up. The 1st applicant did not dispute the debt but was not in agreement with the claimed costs of following up. By the judgment delivered by the trial court on 15th August, 2016, the 1st respondent was awarded a total of TZS 1,200,000/=. It would appear, the 1st applicant managed to pay TZS 800,000/=, the amount which was not disputed. An application for execution was filed and on 19.9.2016, the court ordered the payment of TZS 1,600,000/=. That execution did not materialise. The 1st respondent then filed Civil Case No. 199 of 2017 against Sabina Yohana and Paulo Apolinary, the present applicants, claiming TZS 25, 000, 000=being loss of earnings and bill of costs. The court awarded the 1st respondent a sum of TZS 20,614,000/=. Some other court proceedings ensued and at the end of the day, this court seized of the matter. This court gave its decision. The applicants were aggrieved, hence this application for certification on points of law to be determined by Court of Appeal.

The hearing of this application was conducted by way of written submissions. While Mr. Kevin C. Mutatina, learned Counsel, represented the

applicants and argued the application on their behalf, the respondents enjoyed the legal services of Mr. Yuda R. Kavugushi, learned Advocate who argued in opposition.

Having considered the applicants' affidavit and the counter affidavit filed by the respondents and having taken into account the arguments advanced by the learned Advocates and the cited case laws, I have the following to observe.

In the first place, certification on points of law on cases originating from the Primary Courts such as the present one is governed by section 5 (2) (c) of the Appellate Jurisdiction Act [Cap. 141 R.E.2019] which provides:

"No appeal shall be against any decision or order of the High Court in any proceedings under Head (c) of part III of the Magistrate Courts Act unless the High Court certifies that a point of law is involved in the decision or order."

Second, there is no dispute that it is this court which has exclusive domain to grant such a certificate on points of law. This position was elucidated by the Court of Appeal in the case of **Eustace Kubalyenda versus Venancia Daud**, Civil Application No. 70 of 2011(unreported) where the Court, *inter alia*, held that:

"But it is the High Court only which has been granted exclusive jurisdiction to certify to the Court that a point or points of law is or are involved in the impugned decision or order in respect of the proceedings falling under Head (c) of Part III of the Magistrates' Courts Act, CAP 11 RE.2002 (the MCA), The said provisions of the MCA deal with the appellate and revisional jurisdiction of the High Court in matters originating from the primary courts"

There is no dispute that this Court has been properly moved and has jurisdiction to grant the same.

Third, going by the applicant's affidavit and the submission in support of the application, I am in no doubt that there is an arguable case worth taking to the Court of Appeal and that there are points of law worth consideration by the Court of Appeal. Strictly speaking, a point of law is a matter involving the application or interpretation of legal principles or statutes. It is the determination of what the law is and how it is applied to the facts in the case.

Considering these factors and in view of the fact that the applicants have shown their dissatisfaction with the decision of this court, I find no reason to decline to grant certificate on points of law.

The application is, thus, granted and it is certified that the points raised by the applicants in paragraph 4 (a) to (g) of the affidavit of Paulo Apolinary, the 2nd applicant, are points of law for consideration by the Court of Appeal. These are:-

1. Whether it was proper for the High Court judge to think and treat the claim for bill of costs of 25, 000,000/= in Civil Case No. 199 of 2017 as normal civil claim for general and specific damages
2. Whether the Honourable judge erred in law and grossly misdirected himself in deciding that it was improper for the District Court of Magu to allow extension of time within which to file application for revision against the decision for bill of costs claimed by the 1st respondent in Civil Case No. 199 of 2017
3. Whether the High Court arrived at a wrong conclusion for failure to ascertain whether an available venue for the decision arising from the claim of bill of costs is revision or appeal
4. Whether the High Court arrived at a wrong conclusion for failure to ascertain whether the cause of action at Magu Primary Court in Civil Case No. 199 of 2017 was a claim for a bill which could not result into the judgment as it did.

5. Whether it was proper for the court to overlook that the judgment in Civil Case No. 199 of 2017 at Magu Primary Court was a nullity since the court had no jurisdiction to entertain the bill of costs while the main probate cause was determined and decided in a different Primary Court of Ndagalu.

6. Whether an available avenue for the decision arising out of the claim of the bill of costs is revision or an appeal. The application is, granted. Each party to bear their own costs.

Order accordingly.


W.P. Dyansobera
Judge
12.09.2022

This ruling is delivered under my hand and the seal of this Court on this 12th day of September, 2022 in the presence of 1st Respondent but in the absence of the 1st and 2nd applicants as well as the 2nd respondent.




W.P. Dyansobera
Judge