

TANZANIA / JUDGMENT

20141031 TZCA Arusha

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31 October 2014

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IN THE COURT OF APPEAL OF TANZANIA AT ARUSHA {CORAM: OTHMAN, C.J., MBAROUK, J.A.~
And KAIJAGE, J.A.) CIVIL APPLICATION NO. 1 OF 2014 MARTHA SIIMA

..... APPLICANT VERSUS HHAN DO QAM BAOSH
..... RES PONDENT {Application from a decision of the High
Court of Tanzania at Arusha} {Mugasha, J.) Dated 8th day of November, 2013 in Misc. Civil
Application No. 235' of 2013 RULING OF COURT 30th October & 3rd November, 2014. KAIJAGE,
J.A.: The applicant, Martha Siima, was a losing party in the decision handed down by the High
Court on 11/10/2013 in PC. Civil Appeal No. ' . - 29 of 2011. Aggrieved, she filed a notice of appeal
against that decision. Vide High Court Miscellaneous Civil Application No. 235 of 2013, she also
applied, under section 5 (2) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 (the Act), for
an order certifying to this Court a point~ 1 or points of law involved in the said decision. Against
that application, on 8/11/2013 the High Court made the following order:- "The application is
summarily rejected because the applicant has not annexed the decision/order against which
leave to appeal -is sought as required by rule 49 (3) of the Tanzania Court of Appeal Rules, 2009. "
By a Notice of Motion brought under section 4 (3) of the Act and rule 65 of the Court of Appeal
Rules, 2009 (the Rules), the applicant is moving this court to "examine and revise the summary
rejection order of the High Court." The application is supported by an affidavit taken by Mr. John
Materu, learned advocate, having knowledge of the facts of the case, and it is predicated upon the
following grounds:- "(i) Rejecting Misc. Civil Application No. 235 of 2013 summarily without
citing the law and provision under which the purported summary rejection was made. 2 (ii)
Rejecting Misc. Civil Application NQ.. 235 of 2013 summarily for failure to annex the decision/
order against which leave is sought while the application was not for leave to appeal but for a
certificate on a point/s of law. (iii) The law does not require a party while applying for leave to
annex to the application the decision/order of the High Court against which leave to appeal is
sought. (iv) Costs of the application." Before us, Mr. John Materu, appeared for the applicant while
Mr. John Lundu, learned advocate, represented the respondent. When the application was called
on for 'nearing, Mr. John Lundu rose to submit that the respondent was not resisting the
application, conceding that it is meritorious and that it be granted with no order as to costs. In
his short rejoinder, Mr. John Materu did not press for costs. 3 Considering the grounds upon
which the Notice of Motion is premised and the uncontroverted averments contained in the
affidavit filed in support thereof, we are satisfied that the impugned summary rejection order
with its attendant reasons is irregular and inappropriate for an application seeking for a

certificate of the High Court under section 5 (2) (c) of the Act. As it is, the impugned High Court's summary rejection order merit our intervention under section 4 (3) of the Act. Accordingly, we quash the summary rejection order made by the High Court on 8/11/2013 and hereby restore the applicant's application lodged on 25/10/2013. We furth'er direct that the same application be heard before and be determined by another Judge of the High Court. We make no order as to costs. DATED at ARUSHA this 31 st day of October, 2014. M.C.OTHMAN CHIEF JUSTICE - 4 M.S.MBAROUK JUSTICE OF APPEAL S. S. KAIJAGE JUSTICE OF APPEAL I certify that this is a true copy of the original. 5

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