

TANZANIA / JUDGMENT

rsa ltd vs hanspaul automechs ltd and another 2021 tzhccomd 3470 3 december 2021

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TZHCCOMDDECIDED
3 December 2021

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT DARES SALAAM MISC.
COMMERCIAL APPLICATION NO. 125 OF 2021 RSA
LIMITED..... APPLICANT VERSUS HANSPAUL AUTOMECHS
LIMITED..... 1st RESPONDENT GOVINDER AJAN SENTHILL KUMAR..... 2nd
RESPONDENT Date of Last Order: 15.11.2021 Date of Ruling: 03.12.2021

RULING

MAGOIGA, J. The applicant, RSA LIMITED filed this application against the above named respondents by way of chamber summons under section 5(1) (c) of the Appellate Jurisdiction Act [Cap 141 R.E.2019] read together with Rules 45(a) and 47 of the Tanzania Court of Appeal Rules, 2009 as amended from time to time and an any enabling provisions of the law praying that this court be pleased to grant the following orders, namely:

- a. Leave be granted to the applicant to appeal to the Court of Appeal of Tanzania against the decision (ruling and Order) of the High Court (Commercial Division) at Dar es Salaam in Commercial Case i No. 160 of 2014 by Hon. S.M. Magoiga, Judge delivered on 13th day of August, 2021; and
- b. Costs of this application to follow the event in the intended appeal. As usual the chamber summons was accompanied by the supportive affidavits deposited by Mr. KAVAN SINGH BHAMRA director of the applicant and the second affidavit was that of Mr. Mpaya Kamara, learned advocate for the applicant all stating the reasons why this application should be granted. Upon being served by the chamber summons and accompanied affidavit, the respondents, through Mr. Salim Juma Mushi, learned advocate filed a counter affidavit stating the reasons why this application should not be granted. The applicant through same BHAMRA filed a reply to counter affidavit of Mr. Salim Juma Mushi stating strongly that grant of the application is imperative than not. The brief facts of this application are that the applicant was the plaintiff in the Commercial Case No. 160 of 2014 claiming, among others, the infringement of her copyrights. In the course of determination of the 2 suit, a

preliminary objection on jurisdiction of this court to determine infringement of copyrights emerged from the defendants' learned advocates. Parties' learned advocates were dully heard on the point. This court in its ruling upheld the objection and dismissed the suit with costs. Aggrieved with the dismissal order, the applicant preferred this application for leave, hence, this ruling. When this application was called on for hearing, the applicant was enjoying the legal services of Mr. Mpaya Kamara and whereas the respondents were enjoying the legal services of Ms. Agnes Dominic. Mr. Kamara took the floor by reiterating the provisions under which the application was pegged and prayed to adopt the contents of both affidavits in support of this application. The learned advocate went on to argue that they have complied with formal procedure for grant of the leave by filing notice of appeal, letter requesting copies of the proceedings and have preferred this application within the time prescribed by law for grant of leave which is prerequisite condition to appeal. ; 3 Mr. Kamara pointed out that, in the intended appeal, if leave is granted, they intend to parade four grounds of appeal before the Court of Appeal as contained in the draft memorandum of appeal annexure RSA-B which by themselves suffices for grant of the leave as prayed. On the other hand for the respondents, Ms. Dominic prayed to adopt the contents of the counter affidavit of Mr. Salim Juma Mushi and went on to argue that leave is not automatic but must be exercised where there is point of public interest or a matter that calls for court's intervention. According to Ms. Dominic, the purpose of leave is to censor all matters which are of no merits. In support of the above arguments, the learned advocate for the respondent cited the case of ROBERT RUGAMBIRWA vs. TANICA LTD AND MERCHIORY ERNEST KAREGA, CIVIL APPLICATION NO. 53 OF 2019 (HC) BUKOBA (UNREPORTED) in which quoting the decisions of the Court of Appeal gave several factors for the court to grant or refuse leave which is basically on discretion and has to be judiciously exercised by the court. Another case cited was the case is BRITISH BROADCASTING CORPORATION vs. ERIC SIKUJUA NG'MARYO, CIVIL APPLIVATION NO. 138 OF 2004 (CAT) DSM (UNREPORTED) in which, among others, it was held that leave is not automatic and is 4 granted where the applicant raises serious issues for the determination by the Court of Appeal. According to Ms. Dominic, the stated grounds of appeal were not enough and prayed that the instant application be dismissed with costs. In rejoinder Mr. Kamara brief to the point replied that, the grounds as stated in annexure RSA-B are enough and charged that the attack on them was too general to be considered. As to the cases cited, Mr. Kamara argued in rebuttal that, they complied with the stated requirements in the case laws cited and prayed that this application be granted as prayed. Having carefully and dutifully considered the rivaling arguments for and against this application, the contents of the affidavits and counter affidavit and the cases cited, with due respect to Ms. Dominic, I am inclined to grant leave to the applicant. The reasons why I am taking this stance are abound. One, the issue of jurisdiction of the courts on copy rights infringement as between the enactment of Copy Rights and Neighbouring Act, [Cap 218 R.E.2002] and the amendment of the same Act, in 2018 is not yet settled. Two, whether the amendment of the 5 Copyright and Neighbouring Act, done in 2018 was to apply retrospectively to the cases filed before the amendment is another grey area the Court of Appeal can look at and brings rivaling legal snag into one

understanding. With the above reasons which are the subject of the draft memorandum of appeal in grounds 2 and 4, it cannot be said that the applicant did not raise serious legal issues for the consideration by the Court of Appeal of Tanzania. With the above issues, I am sure and certain this is a fit case for the Court of Appeal of Tanzania to resolve the rivaling contentions between the legal trained legal minds of the parties, among others, on those pertinent legal issues. In the fine, this court hereby grant leave to the applicant to appeal to the Court of Appeal of Tanzania as prayed in the chamber summons. It is so ordered. Dated at Dar es Salaam this 3rd day of December, 2021. S. M. MAGOIGA JUDGE 03/12/2021 6

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