IN THE COURT OF APPEAL OF TANZANIA
AT ZANZIBAR

ZNZ CIVIL APPLICATION NO. 6 OF 2008

MOHAMED ABDALLA KHAMIS ..... APPLICANT
VERSUS
PANDU HAJI KHAMIS
(Administrator of the Estate of
HAJI KHAMIS HAJI) ..... RESPONDENT

(Application for leave to appeal against the Judgment of the High Court of Zanzibar at Vuga)

(Mwampashi, J.)

dated the 18th day of February, 2008
in
Civil Appeal No. 26 of 2007

R U L I N G

25 & 28 November, 2008

OTHMAN, J.A.;

By notice of motion instituted on 4.6.2008 under section 5(1)(c) of the Appellate Jurisdiction Act, 1979 and Rule 43(b) of the Court of Appeal Rules, 1979 Abdalla Khamis, the applicant seeks grant of leave to appeal to this Court against the judgement and decree of the High Court of Zanzibar in Civil Appeal No. 26 of 2007 delivered on 18.02.2008. Essentially, paragraphs 4 and 5 of his affidavit in support, respectively, aver that the intended appeal has good

a balance of probabilities. That the courts below were fully satisfied on the evidence that it was the applicant who was indebted. He urged that there must be an end to all litigation and invited the Court to dismiss the application so as to allow execution proceedings to proceed.

In rejoinder the applicant maintained that there was no proof at all before the courts below that he was indebted to the tune of Tz Shs. 3,800,000/=. That sum, he said, was not a joke. It ought to have been established by documentary evidence, which was not there. That Shai Company Limited, which took the money was ready to repay the respondent. He conceded that the main issue is evidential, but that what was accepted by the courts below was untruthful evidence.

Having carefully considered the material available including the judgment in HC Civil Appeal No. 26 of 2007 against which it is desired to appeal it would appear to me that the central issue before the courts below was whether or not the respondent's deceased father had paid Tz Shs. 3,800,000/= to the applicant or Shai

(unreported). It may be also grantable where the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal (**Karhan Haji Mosi and Shauri Haji Mosi v. Omar Hilal Seif and Seif Omar,** Civil Reference No. 19 of 1997 (CA) (unreported

Relevant to this application, in **Wembele Mtumwa Shamte v. Asha Juma,** Civil Application No. 45 of 1999, the Court posed the pertinent question thus

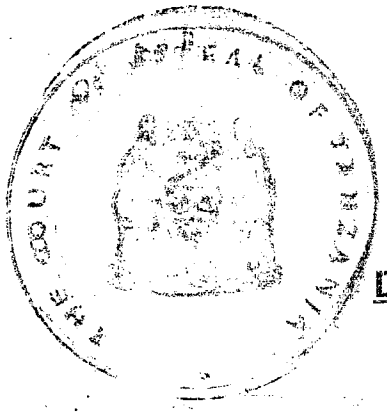
> *"It is obvious that leave will only be granted if the intended appeal has some merits, whether factual or legal. And this is the question facing me now in this application: has the intended appeal any merits?'*

Giving best and judicious consideration to the application, **first,** I am not persuaded that it can be satisfactorily argued that the intended appeal stands any reasonable chances of success on the decisive issue, which is evidential. Having examined the whole proceedings and out of particular curiosity, the evidence of the applicant's additional witness (DW2 Suleiman Abdalla Mchoima) at

DATED at ZANZIBAR this 28th day of November, 2008.

M. C. OTHMAN
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



(P. B. KHADAY)
DEPUTY REGISTRAR