

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 14 of 2009

HAJI KHALFANIAPPLICANT

VERSUS

**1. SHIRIKA LA USAFIRI DAR ES SALAAM(UDA)
2. CONSOLIDATED HOLDING CORPORATION..... RESPONDENT**

(Application for Review of the Region of a single Judge of the Court of Appeal
of Tanzania at Dar es Salaam)

(Munuo, J.A.)

dated the 19th day of December, 2008

in

Civil Application No. 112 of 2008

RULING

7th & 17th February, 2011

MUNUO, J.A.:

The applicant, Mr. Haji Khalfani brought a notice of motion against his employer, Shirika la Usafiri Dar es Salaam and its successor, Consolidated Holding Corporation, the first and second respondent respectively. In this application, the applicant seeks review of the Court's decision in Civil Application No. 112 of 2008 on the grounds that:-

*(a) The decision was obtained by fraud or
misinformation to the court; And*

(b) That serious injustice has been caused to the applicant, a layman.

He prayed for an order that the application for leave to appeal which was filed in the High Court of Tanzania at Dar es Salaam on the 28th September, 2007 be heard and determined in accordance with the law, and the costs of Civil Application No. 112 of 2008 be provided for.

The applicant appeared in person. Mr Jovin Lyimo, learned advocate represented the 1st Respondent. The 2nd Respondent was represented by Mr. Magafu, learned advocate.

As the applicant deponed in his affidavit in support of the application, he was awarded an ex parte judgment in Employment Civil Case No. 48 of 1993 in the Court of Resident Magistrate at Kisutu, Dar es Salaam. He was paid by his terminal benefits. He however, lodged a bill of costs of an exorbitant sh 55, 211,100/= . The trial court dismissed the bill of costs on the ground that it was time barred for it was instituted 101 months or 3067 days after the delivery of the judgment instead being instituted within a

statutory period of sixty days, the prescribed period of limitation. Dissatisfied with the dismissal of the bill of costs, the applicant applied for revision in the High Court vide Civil Revision No. 7 of 2007 before Othman, J. as he then was. The revision was unsuccessful. The applicant then lodged a notice of appeal on the 27th September, 2007 to challenge the decision of the High Court in Civil Revision No. 7 of 2007.

The Notice of Appeal was duly stamped by the Registrar on the 28/9/2007 but it bears no registration Number. Be it as it may, counsel for the 1st Respondent filed Civil Application No. 112 of 2008 in this Court seeking to strike out the notice of the intended appeal on the ground that the applicant had not obtained the mandatory leave to lodge his second appeal. On the 19th December, 2008, the notice of appeal was struck out with costs for lack of statutory leave to appeal. Subsequently, the applicant brought this application for review alleging that the Court had been misinformed and defrauded thereby determining the matter wrongly.

The applicant appeared in person and complained that he is yet to be paid his costs for the employment cause. He conceded that he had been

paid his terminal benefits. He also conceded that the application for leave to appeal is still pending in the High Court so he does not have an order for leave to appeal to this Court to prove his allegation that the Court had been misinformed in the application to strike out the notice of the intended appeal.

Counsel for respondents reiterated that the applicant has not obtained leave to institute an appeal against Civil Revision No. 7 of 2008 so the notice of appeal was rightly struck out.

Revision is provided for under the provisions of Rule 66 (1) of the Court Rules, 2009 which states *inter alia*;

66(1) The Court may review its judgment or order but no application for review shall be entertained except on the following grounds:

(a) The decision was based on a manifest error on the face of the record resulting in the miscarriage of justice;
or

- (b) A party was wrongly deprived of an opportunity to be heard;*
 - (c) The court`s decision is a nullity; or*
 - (d) The court had no jurisdiction to entertain the case, ; or*
 - (e) The judgment was processed illegally, or by fraud or perjury.*
- (2) On application for review shall, subject to necessary modifications, be instituted in the same mode as a revision.*

It appears that the grounds in the notice of motion fall under Rule 66 (1) (e) of the Court Rules. The next question is whether fraud and misinformation led the Court to strike out the notice of appeal.

The Court struck out the notice of appeal for lack of leave to appeal. The applicant conceded that his application for leave to appeal is still pending before the High Court. Indeed there is no order for leave to lodge the second appeal pursuant to Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002.

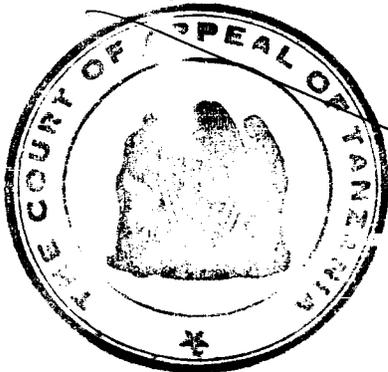
In the case of **Jose A. Ferreira** versus **Mbaraka Salum** Civil Appeal No. 22 of 1994, Court of Appeal of Tanzania, (CA) (unreported), it was held that where the right to appeal lies only with leave to appeal, but such leave had not been obtained, the appeal was incompetent.

In view of the fact that the applicant has not obtained leave to lodge the intended appeal, lack of the material statutory leave rendered the appeal incompetent. Under the circumstances, there is no merit in this review. I accordingly strike out the review. I make no order for costs.

DATED at DAR ES SALAAM this 14th day of February, 2011.

E. N. MUNUO
JUSTICE OF APPEAL

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



(M. A. Malewo)
DEPUTY REGISTRAR
COURT OF APPEAL