

IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

CIVIL APPEAL NO. 60 OF 2007

(CORAM: MUSSA, J.A., MWARIJA, J.A., And MZIRAY, J.A.)

PATSON MATONYA APPELLANT

VERSUS

REGISTRAR, INDUSTRIAL COURT OF TANZANIA
TANZANIA RAILWAY CORPORATION

ATTORNEY GENERAL RESPONDENTS

(Appeal from the decision of the High Court of Tanzania
at Dar es salaam)

(Manento, JK.)

dated the 31th day of June, 2006
in
Misc. Civil Cause No. 41 of 2005

RULING OF THE COURT

13th & 17th July, 2018

MZIRAY, J.A:

The appellant being dissatisfied with the ruling of the High Court in Miscellaneous Civil Cause No. 41/2005 delivered on 31/6/2006, appeals to this Court against the whole of the said ruling on the following grounds:

- 1. The honourable judge erred in law and fact in holding that the Application failed to establish reasons for the grant of leave for orders of certiorari and mandamus*

when actually all reasons for the same were disclosed.

2. The honourable judge erred in law and fact for treating the grounds in support of the application for leave to file an application for orders of certiorari and mandamus as reasons meant for appeal and not reasons for support of an application for certiorari and mandamus and thus dismissing the same.

A brief background of the appeal before us is as follows. The appellant was employed as a clerical clerk by the second respondent on 7/8/1966. He served in various capacities and at the time of his dismissal on 31/12/1997, he was serving in the capacity of a Train Guard. The cause of this dismissal was that on 18/11/1996 while on duty he allowed some passengers to board a passengers' train which was from Tabora to Kigoma without having tickets for boarding. The allegation was investigated by the second respondent at various levels and subsequently he was dismissed from employment on 31/12/1997. Being dissatisfied with the decision, he filed Trade Inquiry No. 21 of 2000 before the Industrial

Court of Tanzania which decided in his favour and ordered his reinstatement.

The second respondent was aggrieved and filed revisional proceedings in Revision No. 1 of 2002, which its decision is at page 21 to 28 of the record of appeal. Upon hearing the revision, the defunct Industrial Court found that for all fairness, the second respondent was supposed to terminate the services of the appellant rather than dismissing him. It reversed the dismissal order and in lieu thereof it ordered for termination of the appellant effective 31/12/1997 with payment of all his statutory terminal benefits.

It would seem the second respondent failed to comply with the Revisional Order of the Industrial Court, as a result the appellant filed Miscellaneous Cause No. 41 of 2005 in the High Court seeking leave to apply for orders of certiorari and mandamus. In its ruling dated 30/6/2006, the High Court (Manento, JK.), dismissed the application. Discontented, the appellant filed this appeal.

At the hearing of the appeal, the appellant appeared in person, unrepresented, while the three respondents had the services of Ms. Rosemary Shio, learned Principal State Attorney.

Before the commencement of the hearing of the appeal, Ms. Shio rose up and without wasting time, informed the Court that the appeal is incompetent on the fact that the record of appeal is incomplete. She referred us to page 53 of the record of appeal which has the ruling appealed against. She submitted that the second page to that ruling is missing, something which makes the said ruling to be incomprehensible. The missing page renders the record incomplete, she argued. She contended that as the record of appeal is incomplete for lacking in the second page in the ruling of the High Court which it should have contained, then the appeal is incompetently before the Court and the remedy available is to strike it out for offending Rule 96(1)(g) of the Tanzania Court of Appeal Rules, 2009, as amended (the Rules). To fortify her position she referred us to the decision of this Court in **John Kashekya v. The Attorney General**, Civil Appeal No. 26 of 2002 (unreported).

On his part, the appellant, much of the fact that he is a layman, did not waste the time of the Court; he immediately conceded that the second page of the contested ruling was missing, something rendering the appeal to be incompetent. He then left the entire matter on the hands of the Court to decide.

On our part, having listened to the arguments presented by the learned Principal State Attorney and the appellant, we find that the issue to decide is whether this appeal is incompetent after it had been detected that one of the page in the contested ruling was excluded from the record of the appeal and that therefore was contrary to Rule 96(1)(g) of the Court of Appeal Rules, 2009 (the Rules). This Rule specifically states:

"96-(1) For the purposes of an appeal from the High Court or a tribunal, in its original jurisdiction, the record of appeal shall, subject to the provisions of sub-rule (3), contains copies of the following documents-

(a) _ (f). N/A

*(g) the judgment or **ruling**;*

(h) _ (k). N/A." (Emphasis's supplied).

From the wording of Rule 96(1) (g), the Ruling, the subject matter of this appeal was one of those core documents relevant in the record of appeal which the appellant filed in Court. Indeed, he filed that ruling but as rightly conceded by the parties, the said ruling excluded the second page which as correctly pointed by the learned Principal Attorney made the contested ruling to be incomprehensible. We agree with the view of Ms. Shio and state without hesitation that the missing page vitiated the substance of the contested ruling and rendered the record of appeal incomplete. Consequences of filing incomplete record has the adverse effect of rendering the appeal incompetent. That has been the position taken by this Court. (see for example **John Kshekya v. The Attorney General** (supra), **Matunda Building Contractors Ltd and Others v. National Bank of Commerce Ltd**, Civil Appeal No. 119 of 2005, **BP Tanzania Ltd v. Dan Associates Enterprises Ltd**, Civil Appeal No. 25 of 2009, **Said Salim Bakhresa and Co. Ltd v. Agro Processing and Allied Products Ltd and Another**, Civil Appeal No. 51 of 2011, **Jamal A. Tamim v. Felix Mkosamali and Another**, Civil Appeal No. 110 of 2012 (All unreported).

On the arguments of the parties and the authorities of the above decisions, we find the record of appeal to be incomplete hence the appeal is incompetent. On that account we strike out this appeal. We make no order as to costs.


DATED at **DODOMA** this 16th day of July, 2018.


K. M. MUSSA
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

R. E. S. MZIRAY
JUSTICE OF APPEAL

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




E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL