

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

CIVIL APPLICATION NO. 433/01 OF 2020

EDWARD MSAGO..... APPLICANT

VERSUS

DRAGON SECURITY..... RESPONDENT

(Application for exemption to the applicant from payment of fees in respect of
application for extension of time against the decision of the High Court of Tanzania
at Dar es Salaam)

(Shangwa, J.)

Dated the 28th day of April, 2009

In

Civil Revision No. 49 of 2008

.....

RULING

20th & 25th November, 2020

LILA, J.A.:

By Notice of Motion, filed under Rules 128(2)(3) and Rule 48(1) of the Tanzania Court of Appeal Rules (the Rules), the applicant is seeking an order exempting him from payment of filing fees in respect of an application for extension of time to file an application for revision against the decision of the High Court of Tanzania at Dar es Salaam, District Registry, (Shangwa, J,) dated 28th April, 2009 in Civil Revision No. 49 of 2008. The Notice of Motion is supported by the affidavit of Edward Msago,

the applicant. The respondent did not file an affidavit in reply to oppose the application.

On the face of the applicant's averments in the affidavit in support of the application, it appears that the dispute between the parties has a long and somewhat sour history. However, briefly, the background facts of the present application as may be gathered from the scanty information contained in the Notice of Motion and the supporting affidavit is that the applicant was an employee of the respondent and his services were terminated way back in the year 5/4/1997 when he was summarily dismissed. Aggrieved, the applicant referred the matter to the Conciliation Board which decided in his favour by reversing the verdict and ordered a termination, Dissatisfied, the respondent unsuccessfully appealed to the Minister for Labour. Following that decision the applicant, through the Regional Labour Officer, lodged a Labour Report at Kisumu Resident Magistrates Court for execution. The finding of that court aggrieved the respondent who successfully preferred an appeal to the High Court. The procedure adopted in execution was faulted and the entire proceedings of the Kisumu Resident Magistrates Court were nullified. To abide to the High Court order, the applicant lodged another application for execution of the

decision of the Minister in Kisumu Resident Magistrates Court which issued an order for execution. That move, prompted the respondent prefer an application for revision, that is Civil Revision No. 49 of 2008. The High Court (Shangwa, J. as he then was) quashed the execution order issued by Kisumu Resident Magistrates Court. Aggrieved, the applicant wishes to challenge the High Court decision by way of an application for revision but he is late and has no means to pay the requisite fees for filing an application for extension of time to lodge an application for revision, hence the present application seeking for waiver to pay court fees.

At the hearing of the application, the applicant appeared in person and was unrepresented. On the other hand, Mr. Job Mwakababu, Senior Security Officer of the respondent company entered appearance. Also in compliance with the requirement of Rule 128(2) of the Rules, Mr. Sylvester Kainda, Deputy Registrar, was notified to appear and duly appeared.

At the onset, Mr. Mwakababu informed the Court that their advocate had travelled to Morogoro and was seeking for an adjournment of the hearing of the application for one week to allow him time to file a reply affidavit. On my prompting as to why the learned counsel travelled to Morogoro instead of turning up in Court in compliance with the Court's

notice of hearing of this application, Mr. Mwakababu had nothing to tell but looked also surprised. On the other side, both the applicant and Mr. Kainda were agreed that no good cause for the non-appearance of the respondent's counsel was advanced to warrant an order of adjournment and pressed for the hearing of the application to proceed.

I, indeed, agreed with the applicant and Mr. Kainda that no good cause to warrant an adjournment was advanced. While fully aware of the hearing date, the learned counsel for the applicant opted to abscond from entering appearance by travelling to Morogoro. Being an officer of the Court, this is not what is expected of him. Worse still he had not filed an affidavit in reply. To that effect, I refused the prayer for an adjournment and ordered the hearing to proceed and Mr. Mwakababu, being an officer of the respondent company, was accorded an opportunity to be heard.

The grounds upon which the application is based are well spelt out in paragraphs 10, 11 and 16 of the supporting affidavit that the applicant is aggrieved by the High Court decision in Civil Revision No. 49 of 2008, is an old man of the age of seventy (70) years, layman and that the delay was not due to his inaction or negligence.

Amplifying the above grounds before me, the applicant was not only brief but was focused. He argued that he is not employed and is old hence has no means to meet the costs of filing the application for extension of time to lodge an application for revision. He urged the Court to exempt him from paying court fees.

In opposition, Mr. Mwakababu strongly argued that the applicant has been losing all the cases he has been lodging against the respondent in his endless litigation. He urged the Court not to allow the applicant lodge the intended application without payment of fees for, to do so, will deny the Government its revenue.

On his part, Mr. Kainda had no objection to the application being granted arguing that the reasons advanced by the applicant that he is an old man and without means because he has no employment amounts to good reasons for the grant of the prayer sought.

As alluded to above, the applicant is seeking for an order exempting him from payment of court fees in lodging an application for extension of time to lodge an application for revision of the High Court decision in Civil Revision No. 49 of 2008.

Rule 128 of the Rules, on which this application is based, provides as follows:-

*"128. (1) where in any appeal from the High Court in its original or appellate jurisdiction in any civil case the Court is satisfied **on the application of an appellant** that he lacks the means to pay the required fees or to deposit the security for costs any that the appeal is not without reasonable possibility of success, **the Court may by order direct that the appeal may be lodged-***

(a) Without prior payment of fees of Court, or on payment of any specified amount less than the required fess;

(b) Without security for costs being lodged, or on lodging of any specified sum less than the amount fixed by rule 120,

and my order that the record of appeal be prepared by the Registrar of the High Court without payment for it or on payment of any specified sum less than the fee specified in the Second Schedule, conditionally on the intended appellant undertaking to pay the fees or the balance of the fees out of any money or property he may recover in or in consequence of the appeal.

(2) The Registrar shall be entitled to be heard on any such application.

(3) No fee shall be payable on the lodging of any such application." (Emphasis added)

From the wording of this Rule, it was my view that an application envisaged is that seeking for an order exempting a party from payment of the requisite Court fees or to deposit security in lodging civil appeals only. It does not apply to civil applications. Alive of that fact, I re-summoned the parties and invited the parties to address me on that. The parties dully appeared before me on 23/11/2020 at 0200 pm and the applicant appeared in person while the respondent was represented by Mr. Mbena Betram, Chief of Operation and Training. Mr. Sylvester Kainda, Deputy Registrar, entered appearance in compliance with Rule 128(2) of the Rules.

Addressing me on the issue raised by the Court *suo motu*, the applicant conceded that Rule 128(2)(3) of the Rules is inapplicable in the circumstances of this application and he urged Rule 4(2)(a)(b) of the Rules be inserted instead. Both Mr. Betram and Mr. Kainda had no objection to the prayer by the applicant. I granted the applicant's unopposed prayer and, in terms of the proviso to Rule 48(1) of the Rules, inserted Rule 4(2)(a)(b) of the Rules in the Notice of Motion as being the law under which the Court is moved on account of there being no specific provision made by the Rules catering for applications for exemption to pay Court fees to lodge an application.

Now back to the present application. Before dwelling onto the merits of this application, I find myself compelled to expound the essential legal requirements for the grant of applications of this nature. As a starting point, I wish to state that generally, in civil cases a party instituting a matter in Court is bound to pay Court fees prescribed by law. In that accord, both the poor and the rich being the subjects of the same laws are enjoined to abide by the law in seeking their legal rights and remedies in courts. However, not everyone is able to pay Court fees. Cognizant of that position, various jurisdictions enacted laws which permit even the poor who are sometimes referred to as “indigent persons” to access courts. This is an exception to the general rule that in instituting a matter in courts, prescribed court fees should be paid. The intention is not to allow court fees to impede those without means not to seek justice. That is to say, one’s position, status and financial ability should not impede justice. Such laws enable persons who are too poor to pay Court fees to institute and prosecute their cases in Court without prior payment of requisite Court fees that is in *forma pauperis* or payment of part of the prescribed court fees.

The crucial issue is who is an indigent person? Legally speaking, a person is an “indigent person” if he is not possessed of sufficient means to

enable him to pay the court fees prescribed by law for his case to be lodged or registered in court. For him to institute a case in court he has to present an application for permission to institute a case as an indigent person. The application shall be granted only when the court is satisfied that the applicant is an indigent person. (See C. K. Takwani, **CIVIL PROCEDURE**, Fifth Edition, Pages 300 and 311).

In the present case, as hinted above, the applicant is seeking an order of the Court exempting him from payment of Court fees in lodging an application for extension of time to file an application for revision. The application has been made by way of a formal application and the applicant has stated in the supporting affidavit and oral arguments before me that he is seventy (70) years old and unemployed hence has no means to meet the requirement of paying Court fees in instituting an application for extension of time. The application was not resisted by way of a reply affidavit. While the respondent resisted the application orally contending that the Government will be denied the revenue in the event the application is granted, the Deputy Registrar had no objection.

I have considered the respondent's contention and am not ready to go along with him. As hinted above, one's right to seek legal remedies

should not be impeded by financial position. The Constitution of the United Republic of Tanzania of 1977 as amended (the Constitution), recognizes the right to work, just remuneration, own property, right to life, personal freedom, privacy and security and others as enshrined in the Constitution under Articles 14 to 24, the exercise of which may result in conflicts inviting court's resolutions. Then, there shall be no justification to disallow the poor not to seek recourse to the courts where there are violations. One's position, status and financial ability should not impede justice. To maintain peace and tranquility, the poor and the rich must have equal right to access the Court. That said, I don't think exemption of the applicant from paying Court fees will cause such a serious damage to the Government. In addition, the fact that one has been losing cases cannot be a ground for denying him the right to institute a case without payment of court fees where, as is the case herein, it is established that he is an indigent person.

In the end, after considering the applicant's averments in the supporting affidavit and arguments before me, like the learned Deputy Registrar, I am satisfied that the applicant is an old man and unemployed hence have no means to enable him pay the requisite Court fees in

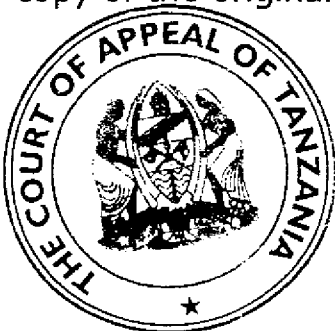
instituting an application for extension of time to lodge an application for revision. He is an indigent person.

For the foregoing reasons, I grant the application. The applicant is hereby therefore exempted from payment of Court fees prior to filing and prosecution of an application for extension of time within which to file an application for revision against the decision of the High of Tanzania at Dar es Salaam District Registry (Shangwa J. as he then was) dated 28/4/2009 in Civil Revision No. 49 of 2008.

DATED at DAR ES SALAAM this 25th day of November, 2020.

S. A. LILA
JUSTICE OF APPEAL

The ruling delivered this 25th day of November 2020, in the presence of Edward Msago, Applicant in person and Betram Mbena, Chief of Operation and Training for the Respondent, is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL