

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: MWARIJA, J.A., KEREFU, J.A., And KENTE, J.A.)**

**CIVIL REFERENCE NO. 12 OF 2019**

**HECTOR SEQUEIRAA..... APPLICANT**

**VERSUS**

**SERENGETI BREWERIES LIMITED ..... RESPONDENT**

**(Application for Reference from the decision of a single Justice of the  
Court of Appeal of Tanzania at Dar es Salaam**

**(Ndika, J.A.)**

**Dated the 17<sup>th</sup> day of May, 2019**

**in**

**Civil Application No. 373/18 of 2018**

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**RULING OF THE COURT**

23<sup>rd</sup> February & 14<sup>th</sup> March, 2022

**KENTE, J.A.:**

There is before this Court, an application for reference arising out of the decision by a single Justice (Ndika, J.A.) in his ruling granting the present respondent M/S Serengeti Breweries Limited (the then applicant) an extension of time within which to lodge a notice of appeal. The background giving rise to the present application is briefly to the following effect.

The present applicant, Hector Sequeira is the decree holder in respect of Revision No. 287 of 2015 before the High Court (Land Division)

sitting at Dar es Salaam. The respondent company is the judgement-debtor. Dissatisfied with the said decision of the High Court (Mipawa J.), (now retired), the respondent sought to appeal to the Court of Appeal but, ostensibly they were not able to do so within the prescribed time frame. Accordingly, they applied for an extension of time within which to lodge the notice of appeal. However, in its ruling dated 13<sup>th</sup> July, 2018 the High Court (Mashaka, J, as she then was), dismissed the said application for lack of merit. Dissatisfied with the decision of the High Court but still bent on pursuing the intended appeal, the respondent applied to this Court by way of a second bite, seeking enlargement of the period within which they could lodge the notice of appeal.

Granting the application and extending time to the respondent to lodge the notice of appeal within thirty days reckoned from the date of delivery of his ruling, Ndika, J.A., was of the view and he accordingly held that, in holding that the respondent had used their inability to get the applicant's work permit as a camouflage to terminate his employment contract, the learned Judge of the High Court seems to have lost sight of the competence of the Commission for Mediation and Arbitration in

entertaining this dispute. The single learned Justice of Appeal went on to find that, the issue of the competence of the CMA over this matter was of sufficient legal importance as to require the investigation and determination by this Court.

In this application which was initiated by way of a letter dated 21<sup>st</sup> May, 2019 (with Ref. No. KAR/CA/HECTOR/1-LETTER/2009) pursuant to Rule 62 (1) (b) and (2) of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules), the applicant is asking the Court to vary and reverse the decision of the single Justice of Appeal on the grounds that it was erroneously made.

At the hearing of the application, the applicant informed the Court that his advocate had recused himself from representing him and therefore he would himself get along without any legal representation. On the other hand, Mr. Alex Mgongolwa, learned advocate appeared for the respondent.

In support of the application, the applicant identified and thereafter he went on expounding on his grievances against the decision of the single Justice saying that, it was based on the wrong finding that there was an illegality apparent on the face of the judgment of the High Court. Seeing

that the applicant had inadvertently turned this application into a dress rehearsal for the intended appeal, we quickly impressed upon him that the single Justice did not expressly or impliedly decide on the illegality or otherwise of the contract between him and the respondent. He then submitted in the alternative that, the respondent should not have been granted an extension of time to lodge the notice of appeal without first and foremost accounting for each day of the delay. He complained that the single Justice appears to have accorded undue weight to the case of **Rock City Tours Limited v. Andy Nurray**, Revision No. 69 of 2013 High Court of Tanzania at Mwanza (unreported) whose facts were quite different from the instant case. The applicant sought to pick holes in the decision of the single Justice saying that, what is more is the fact that the case of **Rock City Tours Limited** (supra) was not cited by Mr. Mgongolwa who was advocating for the respondent and therefore it was not proper for the single Justice to rely on it.

Mr. Mgongolwa on his part, vigorously resisted the submission made by the applicant. He contended that the application is baseless and misconceived. The learned counsel submitted further that, the jurisdiction

of the CMA was a fundamental question and that, that is where the impugned decision of the single Justice was anchored. Mr. Mgongolwa submitted that the applicant should not forget that, at that stage, the Court was not dealing with the merits or demerits of the intended appeal and that Ndika, J.A. had made it clear that, the alleged illegality of the contract between the applicant and respondent was still open to discussion. In support of his argument, the learned counsel referred us to the case of the **Principle Secretary Ministry of Défence and National Service v. Devram P. Valambhia** [1992] TLR 387.

Now, what one should not forget to remember is that, in an application such as the one which was before the single Justice, a party seeking an extension of time is required to furnish good cause to explain away his delay to take the necessary steps or to do any act required by law to be done within a prescribed time frame. Dealing with a somewhat similar question of illegality which touches on the jurisdiction of the CMA and which is the operative cause in the present case, the Court had the following to say as a guidance in **Lyamuya Construction Company Limited** (supra) thus:

*"Since every party intending to challenge a decision either on points of law or facts, it cannot in my view, be said that in Valambhia's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises a point of law should as of right, be granted extension of time if he applies for one. The Court there emphasized that such a point of law must be that of sufficient importance and, I would add that, it must also be apparent on the face of the record such as the question of jurisdiction...."*

As stated earlier, in the instant case, the applicant is complaining but seemingly under a misapprehension that, the single Justice made a definite finding that there was an illegality in the contract between him and the respondent.

With due respect, we are unable to subscribe to the applicant's submission and complaint. For, in the impugned ruling, the learned single Justice, made it plain that the claim by the respondent that the CMA proceeded without jurisdiction to arbitrate on this dispute based on a contract which, on the face of it was void, was a contention which was still

open to argument. To borrow his own words, the learned single Justice observed in part that:

*" without prejudging the intended appeal, it is in my view arguable, in the reasoning in Rock City Tours Ltd (supra), that the CMA proceeded without jurisdiction to arbitrate on a dispute based on a seemingly void contract in respect of the unexpired term of that contract when the respondent had no valid work permit."*

Giving the above-quoted words their plain and ordinary meaning, we would say that, what the single Justice meant here is that the contention that the judgment of the CMA and subsequently the High Court was tainted with illegality because of lack of jurisdiction on the part of the CMA, was an issue which deserves the Court's consideration. In context, he meant no more than that, the alleged illegality or otherwise would be a subject of examination and determination in the intended appeal. In the final analysis therefore, we have found no reason to fault the decision of the learned single Justice.

Because of the foregoing reasons, we find the application before us to have no merit. We accordingly dismiss it in its entirety. However, this being a labour dispute, we make no order as to costs.

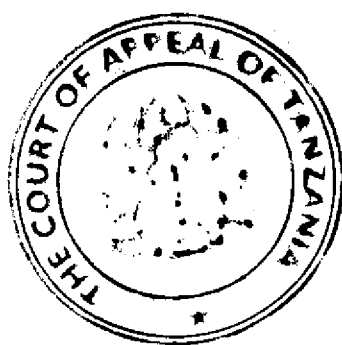
**DATED at DAR ES SALAAM this 9<sup>th</sup> day of March, 2022.**

A. G. MWARIJA  
**JUSTICE OF APPEAL**

R. J. KEREFU  
**JUSTICE OF APPEAL**

P. M. KENTE  
**JUSTICE OF APPEAL**

The Ruling delivered this 14<sup>th</sup> day of March, 2022 in the presence of Applicant in person and Mr. Oscar Magorosa, learned counsel for the Respondent is hereby certified as a true copy of the original.



  
G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**