

**IN THE COURT OF APPEAL OF TANZANIA  
AT ZANZIBAR**

**(CORAM: LILA, J.A., MWANDAMBO, J.A., And MASHAKA, J.A.)**

**CIVIL APPEAL NO. 300 OF 2021**

**PRINCIPAL SECRETARY MINISTRY OF  
FINANCE AND PLANNING ZANZIBAR ..... APPELLANT**

**VERSUS**

<b>SAID ALLY USI .....</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>ALI KHAMIS ALI .....</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>OTHMAN MUSSA .....</b>	<b>3<sup>RD</sup> RESPONDENT</b>
<b>HAJI MOHAMED HAJI .....</b>	<b>4<sup>TH</sup> RESPONDENT</b>
<b>KHADIJA MOHAMED AHMED .....</b>	<b>5<sup>TH</sup> RESPONDENT</b>
<b>TAMIM BURHAN IDAROUS .....</b>	<b>6<sup>TH</sup> RESPONDENT</b>
<b>MWANAHAMIS ALI KHAMIS .....</b>	<b>7<sup>TH</sup> RESPONDENT</b>
<b>KHAMIS ALI KHAMIS .....</b>	<b>8<sup>TH</sup> RESPONDENT</b>
<b>RAMADHAN KHAMIS ALI .....</b>	<b>9<sup>TH</sup> RESPONDENT</b>
<b>ABDULMALIK DAUD TALIB .....</b>	<b>10<sup>TH</sup> RESPONDENT</b>

**[Appeal from the decision of the High Court of Zanzibar  
(Industrial Division)]**

**(Sepetu, J. as he then was)**

**dated the 16<sup>th</sup> day of October, 2018  
in  
Civil Appeal No. 01 of 2018**

**RULING OF THE COURT**

13<sup>th</sup> & 16<sup>th</sup> June, 2022

**MWANDAMBO, J.A.:**

The High Court of Zanzibar (Industrial Division) allowed an appeal by the respondents against various decisions of the Public Service Commission and ordered the appellant to reinstate the respondents in their respective work places with attendant incidents. The decision, made on 16/10/2019,

aggrieved the appellant who preferred the instant appeal through the Honorable Attorney General of Zanzibar.

Briefly, the respondents were civil servants in various posts with the Revolutionary Government of Zanzibar. On 28/06/2016, the appellant suspended the respondents pending inquiry into their alleged involvement in the embezzlement of public funds. The respondents' attempt to have their complaint against the continued suspension from employment could not be processed by the Public Service Commission (the Commission) because the allegations resulting into the suspension involved criminal offences to be dealt with by the Zanzibar Anti- Corruption and Economic Crimes Authority known by its acronym as ZAECA. That response aggrieved the respondents who preferred an appeal before the Industrial Division of the High Court for Zanzibar on 20/02/2018. After dismissing the preliminary objections raised by the appellant in a ruling delivered on 07/01/2019, the High Court heard the respondents' appeal and determined it in their favour in a judgment delivered on 16/10/2019 now challenged in this appeal.

The appeal was met by a notice of preliminary objections lodged on behalf of the respondents by Mr. Salim Hassan Bakar Mnkonje, learned advocate containing four grounds namely:

- 1. That the ruling on the preliminary point appealed in ground 2 in the memorandum of appeal is not appellable;*

*Alternatively:*

- 2. The appeal is incompetent for want of leave and certificate on point of law.*
- 3. The appeal is incompetent for not including a drawn order from the ruling on the preliminary objections.*
- 4. The appeal is incompetent for failing to include certified copies of exhibits in the record of appeal.*

Before us during the hearing of the appeal, Mr. Mnkonje appeared assisted by Mr. Abdulkhaliq Mohamed Aley, learned advocates, ready to prosecute the preliminary objections. The appellant was represented by Mr. Ali Ali Hassan learned Principal State Attorney assisted by Mr. Ali Issa Abdallah, learned State Attorney.

Mr. Mnkonje's submission on the first point was that as there was no appeal against the ruling on the preliminary objections delivered on 07/01/2019, the appellant's second ground in the memorandum of appeal

lacks legal standing. This is so, he argued, the ground arises from an interlocutory decision which did not have any effect of finality of the matter before the High Court barred by rule 49 of the Zanzibar Industrial Court Rules, Legal Notice No. 141 of 2015. We understood Mr. Mnkonje urging the Court discard the said ground.

For his part, Mr. Hassan contended that ground two has been properly taken because, it being arisen from interlocutory non- final decision, it could not have been appealed against until after the determination of the matter before the High Court. According to the learned Principal State Attorney, there was nothing irregular for the appellant combining grounds in the memorandum of appeal including those arising from the non-final interlocutory decision as it were.

We take note that the learned counsel are at one on the bar to appeals on interlocutory decisions with no effect of finality in terms of rule 49 of L.N. 141 of 2015 superseded by the Zanzibar Industrial Court Rules, Legal Notice No. 57 of 2021 read together with section 5 (2) (d) of the Appellate Jurisdiction Act [Cap 141 R.E 2019], henceforth, the AJA. The burden in Mr. Hassan's argument lies in the decision giving rise to the notice of appeal,

subject of the instant appeal. Rule 83 (3) of the Tanzania Court of Appeal Rules, 2009 (the Rules) states:

*"Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision and where it is intended to appeal against part only of the decision, shall specify the part complained of, shall state the address for service of the appellant and shall state the names and addresses of all persons intended to be served with copies of the notice."*

The appellant's notice of appeal appearing at pages 187 and 188 of the record of appeal states clearly that the appellant was dissatisfied with the decision of the High Court (Industrial Division) dated 16/10/2019. It is thus quite clear that despite being dissatisfied with the ruling of the High Court overruling his preliminary objections, he has seen no reason to appeal against it. Had it been otherwise, we see no reason why the appellant failed to indicate in the notice of appeal that he was dissatisfied with both decisions. As matters stand now, there is neither any indication that the appellant was dissatisfied with the ruling made on 07/01/2019 nor is there any notice of appeal against that decision. In the upshot, we sustain the

first point of the preliminary objections and discard ground two in the memorandum of appeal leaving the appeal intact on the remaining grounds.

Next, Mr. Mnkonge addressed us on the want of leave to appeal from the impugned decision. He premised his submission on section 5 (1) (c) of the AJA supported by the Court's decision in **Boniface Anyisile Mwabukusi v. Atupele Fredy Mwakibete & Others**, Civil Appeal No. 46 of 2021 (unreported) on the requirement to obtain leave to appeal from other decisions and orders of the High Court not falling under section 5 (1) (a) and (b) of the AJA. As the appellant had not obtained the requisite leave, the learned advocate urged the Court to find the appeal incompetent and strike it out.

Mr. Hassan's submission in reply was that no leave was required because the matter before the High Court was not an appeal but a complaint in which that court exercised its original jurisdiction. With respect, we do not think that the argument is tenable in view of the fact that, irrespective of the appellant's opinion on the nature of the decision of the Commission, the High Court exercised its appellate jurisdiction.

That aside, Mr. Hassan was insistent that the appellant had an automatic right of appeal under section 87 (1) of the Labour Relations Act, 2005 (the LRA). Mr. Mnkonje was adamant in his rejoinder that, section 87 (1) of the LRA notwithstanding, appeals to the Court are governed by the AJA and the Rules made thereunder and thus, in the absence of leave to appeal, the appeal is incompetent and liable to be struck out.

There is no dispute that the decision appealed against falls under the category of decisions of the High Court not covered by section 5(1) (a) and (b) of the AJA which prescribes right of appeal to the Court except where any other written law provides otherwise. One of such written law is section 87 (1) of the LRA. That section creates a right of appeal to litigants aggrieved by the decisions or orders of the Industrial Division of the High Court of Zanzibar in accordance with the Court Rules. It is plain that whereas section 5 (1) (c) of the AJA requires that leave should be obtained relating to decisions from which no automatic right of appeal exists, the Rules regulate the procedure for appealing to the Court. As Mr. Mnkonje would appreciate, the Rules do not create any right of appeal in as much as they do not restrict such right where the relevant law has provided for it. We do not think that the legislature made a mistake in not subjecting such

appeals from the decisions of the Industrial Division under section 87 (1) of the LRA. Discussing the rules of construction of civil statutes, the learned authors of Mulla on the Code of Civil Procedure Act V of 1980 16<sup>th</sup> edition by P.M. Bakshi, opine:

*"The golden rule for the interpretation of this [CPC] as well as other Acts is to consider the plain meaning of the words used. The Court's function is not to say what the legislature meant but to ascertain what the legislature has said it meant.*

*The Court cannot proceed on the assumption that the legislature has made a mistake. Even if there is a defect, it is not for the Court to add to or amend the words of a statute or to supply a casus omissus. ...When the language is clear, it is the duty of the court to give effect to it without calling in aid outside considerations to ascertain the intentions of the legislature [ at page 4]. "*

The above is consistent with what the Court stated in **R v. Mwesige Geoffrey & Another**, Criminal Appeal No. 355 of 2014 (unreported):

*"... when the words of a statute are unambiguous, "judicial inquiry is complete". There is no need for interpolations, lest we stray into the exclusive*



*preserve of the legislature under cloak of overzealous interpretation. This is because "courts must presume that a legislature says in a statute what it means and means in a statute what it says there!"*

Applying the above to the instant appeal, it is beyond peradventure that the language used in section 87 (1) of LRA is too clear to require appeals from the Industrial Division of the High Court to be with leave. We thus overrule the second point of objection.

Finally on the missing drawn order in the record, subject of the third point of objection. Mr. Mnkonje argued and we agree with him that a drawn order in a ruling on the preliminary objections made on 07/01/2019 should have been included in the record of appeal. Even though Mr. Ali argued that the said order was not necessary considering that the appeal is not against the ruling on the preliminary objections rather on the whole decision sustaining the respondent's case before the High Court. With respect, that argument falls on the face of the appellant's own quest to fault the High Court for overruling his preliminary objections, subject of ground two in the memorandum of appeal. However, in view of our determination of the first point resulting into discarding that ground, the issue for our determination turns on whether such document could be left out in the record of appeal.

As argued by Mr. Mnkonje, our decision in **Fedha Fund & 2 Others v. George T. Varghese & Another**, Civil Appeal No. 8 of 2008 referred in **FBME Bank Limited v. Cristal Resort Limited**, Civil Appeal No. 168 of 2016 (both unreported) cannot be more apt. That decision is relevant for the proposition that the appellant has no right to choose which documents to be included in the record of appeal for the purposes of compliance with rule 96 (1) and (2) of the Rules. However, we do not share the same view with the learned advocate with regard to the effect of omission to include a document in a record of appeal. We are not prepared to accept the learned advocate's invitation to find the appeal incompetent and strike it out due to the missing copy of the drawn order just as we did in **FBME Bank Ltd's** case (supra). Our stance is by no means a result of any convincing argument from the appellant's counsel rather, because we are satisfied that the omission is curable under rule 96 (7) of the Rules by filing a supplementary record of appeal. In our view, the application of the cases cited by Mr. Mnkonje, notably, **FBME Bank Ltd** (supra) and many others pronounced prior to the coming into force of rule 96 (7) of the Rules can only come into play where a party who has been granted leave to make

good the defect in a record of appeal fails to do so. Indeed, that is very rationale behind rule 96 (8) of the Rules which stipulates:

*" Where leave to file a supplementary record under subrule (7), has been granted, the Court shall not entertain any similar application on the same matter."*

Mr. Mnkonge's further argument that the appellant cannot benefit from rule 96 (7) of the Rules because the omitted documents is a vital document in the appeal is attractive but legally untenable. A similar argument was advanced in our recent decision in the current sessions in **Haïdar Mohamedhussein Rashid & Another v. Akbar Habib Hassanali**, Civil Appeal No. 101 of 2021 (unreported). The Court rejected that argument holding that rule 96 (7) of the Rules does not classify between the so-called core and non-core documents in a record of appeal for the purposes of compliance with rule 96 (1) and (2) of the Rules. We equally reject the learned advocate's argument in this appeal. That said, as Mr. Hassan urged us to exercise our discretion by allowing the appellant to rectify the omission in the record of appeal, we grant the leave sought under rule 96 (7) of the Rules and order him to lodge a supplementary record of appeal not later than 60 days from the date of this ruling.

In fine, the respondent's preliminary objections are sustained in ground one and three save to the extent indicated leaving the appeal intact. Subject to the appellant's compliance with the Court's order to wit; lodging a supplementary record of appeal, the appeal shall be placed for hearing in the next convenient sessions of the Court on a date to be fixed by the Registrar. Costs shall abide the outcome of the appeal.

It is so ordered.


**DATED at ZANZIBAR** this 15<sup>th</sup> day of June, 2022.

S. A. LILA  
**JUSTICE OF APPEAL**

L. J. S. MWANDAMBO  
**JUSTICE OF APPEAL**

L. L. MASHAKA  
**JUSTICE OF APPEAL**

The Ruling delivered this 16<sup>th</sup> day of June, 2022 in the presence of the Mr. Abubakar Omar, learned State Attorney for the appellant and Mr. Salum Mkonje, learned counsel for the respondent is hereby certified as a true copy of original.



J. E. FOVO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**