

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

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

**CIVIL APPEAL NO. 147 OF 2018**

**EX-POLICE NO. E. 5812 PC RENATUS ITANISA ..... APPELLANT**

**VERSUS**

**THE INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**(Appeal from the Ruling and Drawn Order of the High Court of Tanzania  
Main Registry at Dar es Salaam)**

**(Khaday, J.)**

**dated the 22<sup>nd</sup> day of May, 2018**

**in**

**Misc. Civil Application No. 112 of 2017**

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**RULING OF THE COURT**

*10<sup>th</sup> May, & 2<sup>nd</sup> August, 2022*

**KAIRO, J.A.:**

The appellant herein seeks to challenge the ruling and order of the High Court of Tanzania, at Dar es Salaam (Main Registry) in Miscellaneous Application No. 112 of 2017 dated 22th day of May, 2018.

The facts that culminated into the dispute before the High Court are straight forward as follows:-

The appellant was dismissed from Police Force where he was employed as a police officer on 11<sup>th</sup> June, 1996 for corrupt transactions.

He was aggrieved and appealed to the higher authority, but to no avail. Later, he successfully applied for prerogative orders of certiorari and mandamus before the High Court vide Miscellaneous Cause No. 29 of 2003 wherein the 1<sup>st</sup> respondent was ordered to ensure fresh determination of the dispute by a proper authority. However, it was not until 26<sup>th</sup> October, 2017 when the appellant received a letter from the office of the Permanent Secretary, Ministry of Home Affairs informing him that his matter had been determined in his disfavour by the 1<sup>st</sup> respondent way back in the year 2006 and that the said decision was communicated to him through a letter dated 3<sup>rd</sup> October, 2006. The appellant was not amused and applied for an extension of time to file an application for leave to apply for judicial review against the said decision. The application was dismissed for want of merit on 22<sup>nd</sup> May, 2018 and hence he decided to challenge the said decision in this Court on two grounds of complaints. However, we shall not recapitulate them for the reason to become apparent shortly.

At the hearing of the appeal, the appellant appeared in person unrepresented and Ms. Lilian Machagge, learned State Attorney represented the respondents.

Before the commencement of the hearing, Ms. Machagge informed the Court that, in the course of preparing for the hearing of this appeal, the respondents noted two point of law which touch on the jurisdiction of the Court to entertain the appeal. She thus prayed for leave of the Court under Rule 4 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules) to bring them to the Court's attention for determination.

Elaborating on the first point, Ms. Machagge submitted that the appeal was lodged without leave of the High Court, thus contrary to the mandatory requirement under the provisions of section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 (the AJA). As for the second point, she contended that the appeal was lodged out of time. The appellant did not object to the prayer by the Ms. Machagge to raise them and accordingly the Court granted her prayer, hence this ruling.

In her brief submission, Ms Machagge argued in support of the first point that, the appeal before the Court seeks to challenge the decision of the High Court which denied the appellant an extension of time to file an application for leave to apply for prerogative orders against the decision of the 1<sup>st</sup> respondent. She went on that, basing on the nature of the decision sought to be challenged, the appellant was required to seek and obtain leave under section 5 (1) (c) of the AJA, before lodging the appeal,

but he did not do so. She argued that the requirement is mandatory and the omission renders the appeal incompetent resulting into lack of Court's jurisdiction to hear and determine it. She cited the case of **Godwin Bernard Kagaruki vs The Hon. President of the United Republic of Tanzania & 5 Others**, Civil Appeal No. 270 of 2020 (unreported) to support her arguments.

As regards the second point, Ms. Machagge submitted that the decision sought to be challenged was delivered on 22<sup>nd</sup> May, 2015 and the notice of appeal was lodged on 28<sup>th</sup> May, 2018. She further submitted that, the appellant requested for relevant documents for appeal purpose from the Registrar on 24<sup>th</sup> May, 2018 who later on 9<sup>th</sup> July, 2018 informed him on the readiness of the documents requested for appeal purpose. She added that the appellant lodged the memorandum and record of appeal on 5<sup>th</sup> September 2018, thus out of time.

Ms. Machagge went on arguing that, though the Registrar issued a certificate of delay, the same was defective, as such the appellant cannot rely on it to exclude the days stated therein. She elaborated that the days to be excluded were supposed to be reckoned from the date when the appellant requested for the necessary documents from the Registrar, that is on 24<sup>th</sup> May, 2018 to when the Registrar informed the appellant on the

readiness of the requisite documents for appeal purpose, that is the 9<sup>th</sup> July, 2018. However, she went on the state that, the record shows that the Registrar excluded the days from when the notice of appeal was lodged that is 28<sup>th</sup> May, 2018 to when the requisite documents were supplied to the appellant on 16<sup>th</sup> July, 2018 to which she argued to be an error. When prompted by the Court on the way forward, Ms. Machagge stated that the pointed-out error can be rectified by granting leave to the appellant to lodge a supplementary record of appeal.

In his riposte, the appellant refuted the contention that the appeal was time barred. Regarding the absence of the required leave of the court, the appellant conceded that, he neither applied nor obtained leave to appeal to the Court. He however urged the Court to overrule the points of objection for being an afterthought explaining that two years has lapsed since he served the respondents with the record of appeal but they did not raise them before.

When invited to make her rejoinder, Ms. Machagge had nothing to rejoin.

Although the respondents raised two issues, we think the one regarding competence of the appeal for want of leave to appeal will suffice in the circumstances of this matter.

It is the contention of the respondents that the appellant was enjoined to seek and obtain leave before lodging this appeal as provided in section 5(1) (c) of the AJA, to which he did not. The appellant on his part conceded that no leave of the Court was sought and granted before he lodged this appeal. He however attacked the delay on the part of the respondent for raising the issue now, while two years have lapsed since he served them with the record of appeal. It is a settled principle of law that, a legal point may be raised at any time, even at the appellate stage. We have time and again restated the said stance of law in our various cases including **Ms. Fida Hussein & Company Limited vs. Tanzania Harbors Authority**, Civil Appeal No. 60 of 1999 (unreported). On that account, the respondent is justified to raise the same at this stage regardless of the time lapsed. The argument of the appellant on this aspect therefore holds no water.

Our starting point is section 5 (1) of the AJA which provides:-

*"5 (1) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal-*

*(a) Against every decree including an ex-parte or preliminary decree made by the High Court in a suit under the Civil Procedure Code, in the exercise of its original jurisdiction;*

*(b) Against the following orders of the High Court made under its original jurisdiction, that is to say.*

- (i) An order superseding an arbitration where the award has not been completed within the period allowed by the High Court;*
- (ii) An order on an award stated in the form of a special case;*
- (iii) An order modifying or correcting an award;*
- (iv) An order filing or refusing to file an agreement to refer to arbitration;*
- (v) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;*
- (vi) an order filing or refusing to file an award in an arbitration without the intervention of the High Court;*
- (vii) an order under section 95 of the Civil Procedure Code, which relates to the award of compensation where an arrest or a temporary injunction is granted;*
- (viii) an order under any of the provisions of the Civil Procedure Code, imposing a fine or directing the arrest or detention; in civil prison, of any person, except where the arrest or detention is in execution of decree;*
- (ix) any order specified in rule 1 of Order XLIII in the Civil Procedure Code or in any rule or the*

*High Court amending, or in substitution for,  
the rule;*

*(c) with the leave of the High Court or Court of Appeal,  
against **every other** decree, order, judgment,  
**decision** or finding of the High Court” [Emphasis  
added].*

The above cited provision classifies the appeals which, one may lodge as of right and those which require leave of the High Court or the Court as provided in paragraph (c) of subsection 1 of the cited section. The categorization was well dealt with in the case of **Tanzania Breweries Limited vs. Leo Kobelo**, civil Appeal No. 17 of 2016 (unreported). Previously in the case of **Hussein Shabenga Jumanne S. Makonyanya and 6 others vs. Tanzania Ports Authority**, Civil Appeal No. 39 of 2009 (unreported) the Court observed that, a matter which does not fall under any of the categories provided for under the provision of section 5 (1) (a) and (b) of the AJA, requires leave under section 5 (1) (c) of the AJA and failure to obtain it has the effect of ousting the jurisdiction of the Court to entertain and determine it.

The Court when interpreting the provision of Section 5 (1) of the AJA in **Fatuma Khatibu vs. The Treasury Registrar**, Civil Appeal No. 397 of 2020 (unreported) found that an appeal seeking to challenge the ruling and order of the High Court which denied the appellant an extension



of time to lodge application for review falls under “any other order”, thus require leave of the Court before lodging the appeal. A similar stance was taken in **Boniface Anyisile Mwambukusi vs. Atupele Fredy Mwakibete and Two others**, Civil Appeal No. 46 of 2021 (unreported).

The instant appeal emanates from the decision of the High Court which dismissed the appellant’s application for extension of time to file an application for leave to apply for prerogative orders against the 1<sup>st</sup> respondent. Subjecting the said decision into the categorization under section 5 (1) as interpreted in the cited cases above, it is our considered view that the same is “*any other decision*” which falls under section 5 (1) (c) of the AJA. This implies that the appellant was enjoined to seek and obtain leave from the High Court or the Court before lodging his appeal to this Court.

Having found that, the appeal required leave under section 5 (1) (c) of the AJA which was not procured as conceded by the appellant, the next question is on the consequence and way forward. The Court in **Enock M. Chacha vs. Manager NBC Tarime** [1995] T.L.R. 250 when faced with a similar situation observed as follows:-

*"Under Section 5 (1) (c) of the Appellate Jurisdiction Act, appeals like the present one must come to this Court only with the leave of the High Court. The*

*appellant neither sought nor obtained leave to appeal to this Court. The appeal is therefore incompetent for non-compliance with section 5 (1) (c) aforesaid"*

Flowing from the above decision, we agree with Ms. Machagge that the appeal is incompetent before the Court for want of leave to appeal, and accordingly, we strike it out.

We make no order as to costs as the matter originates from a labour dispute.

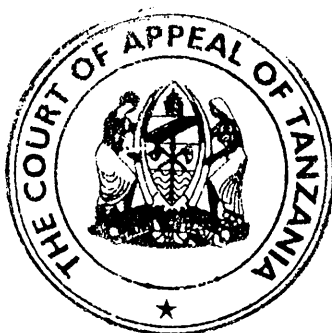
**DATED at DAR ES SALAAM** this 29<sup>th</sup> day of July, 2022.

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

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

L. G. KAIRO  
**JUSTICE OF APPEAL**

This Ruling delivered on 2<sup>nd</sup> day of August, 2022 in the presence of Ms. Narindwa Sekimanga, learned State Attorney for the Respondent and in the absence of the Appellant, is hereby certified as a true copy of original.



  
C. M. MAGESA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**