

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: NDIKA, J.A., KITUSI, J.A. And RUMANYIKA, J.A.)**

**CIVIL APPEAL NO. 220 OF 2019**

**JOSEPH MAGATA..... APPELLANT**

**VERSUS**

**VODACOM (T) LIMITED.....RESPONDENT**

**[Appeal from the ruling and drawn order of the High Court of Tanzania  
(Labour Division) at Dar es Salaam]**

**(Wambura, J.)**

**dated the 14<sup>th</sup> day of June, 2019**

**in**

**Miscellaneous Labour Application No. 433 of 2018**

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**JUDGMENT OF THE COURT**

*16<sup>th</sup> & 24<sup>th</sup> February, 2022*

**KITUSI, J.A.:**

There is a legal battle between the appellant Joseph Magata and his employer Vodacom (T) Limited, the respondent, on termination of that employment, the details of which we do not need to go into, at this stage. In a nutshell, the appellant won the case at the Commission for Mediation and Arbitration (CMA) whose award was however revised by the High Court on application by the present respondent.

The appellant applied for a review of that decision of the High Court, but on 6/9/2018 Hon. Nyerere J. made the following order upon satisfying herself that the application before her was incompetent: -

*"I proceed to struck (sic) out the incompetent application. And for the interest of justice **applicant is granted seven days** to file proper application in accordance to provisions of law. It is so ordered.*

*SGD*

*A.C. NYERERE, J*

*6/9/2018"* (Emphasis supplied).

Six days later, the appellant filed a fresh application for review, that is, on 12/09/2018, but the application was dismissed by the High Court, (Wambura J,) sustaining a preliminary point of objection that had contended that the application was filed out of time. That order of dismissal is the subject of this appeal.

First of all, we marvel at the enthusiasm of Mr. Deogratus Godfrey, learned advocate for the appellant. He lodged a memorandum of appeal consisting of seven grounds of appeal, written submissions and a long list of authorities. With respect, given the narrow scope of the issue for our determination, we think the learned counsel carried a

gun to a knife fight, because we are going to dispose of this appeal on only one ground of appeal. We appreciate the work put on the case, but of appeal turns on the first ground of appeal which is: -

*"1. In determining whether the Review application (Misc. Labour Application No. 433 of 2018) was time barred the Honourable Court erred in law by disowning its own order in Misc. Application No. 463 of 2017 which granted the appellant (then applicant) the leave to re-file the Review application within seven (7) days from 6<sup>th</sup> of September, 2018".*

The respondent was represented by Messrs. Lulinga Jonathan Lulinga, Alex Mianga and Luka Elingaya, all learned advocates. They spoke through Mr. Lulinga.

Skipping the fine details in the learned submissions by counsel, the issue is whether the dismissal of the application for being time barred was correct while the same had been filed within the time ordered by the same court. Wambura, J's dismissal order concluding that the application was time barred, was based on the fact that a copy of the order giving the appellant extension of time was not placed before her.

It is of particular interest to observe that Messrs. Deogratius Godfrey and Lulinga Jonathan Lulinga, who are representing the parties before us, are the same advocates who were in court when Nyerere J. ordered extension of time to file a fresh application for review, and were again in appearance when Wambura J, dismissed the application on account of time bar. Aware of that fact, we wondered and invited Mr. Lulinga to explain why it did not occur to him that he had a duty to tell Wambura J, that he was aware of the existence of the order of extension of time, but counsel had no plausible explanation. We did so, having in mind the several pronouncements we have previously made regarding the duty of advocates to the court. In **Mohamed Iqbal v. Esrom M. Maryogo**, Civil Application No. 141/01 of 2017 (unreported), we had this to say: -

*"We must emphasize that an advocate, in addition to being a professional, is also an officer of the court and plays a vital role in the administration of justice. An advocate is therefore expected to assist the Court in an appropriate manner in the administration of justice. Indeed, one of the important characteristics of an advocate is openness in different ways to share to the court the relevant information or message*

*which comes to his attention whether from his client or his colleagues concerning the handling of the case regardless of whether he has been requested by the court to do so or not”.*

In this case Mr. Lulinga not only prayed seek and hide but he suppressed the truth and justice suffered for that. In so conducting himself, the learned counsel contributed to the error that is being addressed in the first ground of appeal, namely, the court disowning its own order. If the order granting the appellant extension of time was not exhibited in court, it does not mean it did not exist, and the counsel for the respondent abdicated his duty by sitting on the fence.

This in our view, is a fit case to remark, as the Court did in **Mohamed Said @ Muddi v. Republic**, Criminal Appeal No. 316 of 2014 (unreported): -

*“We respectfully think that with a modicum of care, this appeal would have been avoided. See also **Charles Mabula v. Republic**, Criminal Appeal No. 191 of 2012. How true then is the saying;’ **‘more haste, less speed’**”. (emphasis ours).*

Similarly, in this appeal, if the learned judge had exercised a little bit of patience, she would have made a more informed decision and avoided this appeal. In our view, nothing has been achieved in the end, by ignoring the existence of the court's own order. Thus, the first ground of appeal has merit and on that basis this appeal is allowed. The order of the High Court dismissing the application for review is quashed. Let the application be restored and heard on merits.

It is so ordered.

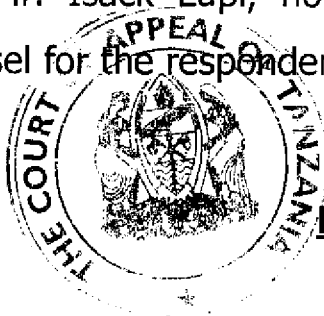
**DATED** at **DAR ES SALAAM** this 22<sup>nd</sup> day of February, 2022.

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

S. M. RUMANYIKA  
**JUSTICE OF APPEAL**

This Judgment delivered on 24<sup>th</sup> day of February, 2022 in the presence of Mr. Deogratus Godfrey, learned counsel for the appellant and Mr. Isack Lupi, holding brief for Mr. Jonathan Lulinga, learned counsel for the respondent, is hereby certified as a true copy of original.



  
F. A. MTARANIA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**