

IN THE COURT OF APPEAL OF TANZANIA

AT MOSHI

(CORAM: KOROSSO, J.A., KIHWELO, J.A., And RUMANYIKA, J.A.)

CIVIL APPLICATION NO. 424/02 OF 2020

GASPER JOSEPH LUANDA APPLICANT

VERSUS

COMMISSIONER GENERAL-TRA RESPONDENT

**(Application for Revision against the proceedings, Ruling and Drawn Order of
the High Court of Tanzania, at Moshi)**

(Mkapa, J.)

Dated 17th day of June, 2020

in

Labour Revision No. 17 of 2018

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RULING OF THE COURT

4th & 12th July, 2023

RUMANYIKA, J.A.:

This is an application for revision on the decision of the High Court of Tanzania, at Moshi (Mkapa, J.) in Labour Revision No. 17 of 2018 dated 17th June, 2020. It is premised under section 4 (3) of the Appellate Jurisdiction Act, Cap 141 R.E 2002 (the AJA) and rule 65 (1), (2), (3), (4), of the Tanzania Court of Appeal Rules, 2009 (the Rules). The application is supported by an affidavit of Gasper Joseph Luanda.

The historical background of this application is inevitably long for the reasons that will shortly come to light. The applicant was an

employee of the respondent who was summarily dismissed from his employment on 6th April, 1999. Undaunted, he appealed to the Minister for Labour (the Minister) who reversed and substituted the dismissal for termination. The Minister also ordered that the applicant should be paid all terminal benefits instead of just one month's salary in lieu of Notice. Still aggrieved, the applicant instituted a labour dispute before the Commission for Mediation and Arbitration at Moshi (the CMA) vide Labour Dispute No. MOS/CMA/M/62/2012. However, that dispute was dismissed for want of jurisdiction. That happening however, the applicant made a paradigm U-turn by filing an application before the Resident Magistrate's Court, to execute the award which was previously issued by the Minister, but that application was struck out. He did not end there. He applied for execution of the said award before the High Court vide Labour Execution No. 18 of 2013 which too was struck out by the Deputy Registrar for want of jurisdiction. Thereafter, he filed Miscellaneous Civil Application No. 23 of 2013 before the RM's court which was also dismissed.

Still struggling to quench his thirst for justice, this time around the applicant filed Revision No. 1 of 2015 against the said decision of the RM's Court in Miscellaneous Civil Application No. 23 of 2013,

unfortunately again he lost the battle as the application was struck out. However, he did not give up. He preferred an application to review the decision of the High Court in Revision No. 1 of 2015 vide Miscellaneous Labour Application No. 8 of 2018 which was also dismissed. Still disgruntled, he filed yet another application Miscellaneous Civil Application No. 37 of 2018 seeking to restore the decision and order made in Miscellaneous Application No. 23 of 2013. This again was struck out for being incompetent. Still discontented, the applicant finally filed, unsuccessfully though, Labour Application No. 17 of 2018 also in the High Court seeking an extension of time to file revision, vide Miscellaneous Application No. 23 of 2013.

The applicant has pegged this application mainly on the ground that the decision sought to be revised is tainted with illegalities and irregularities namely, despite the respondent's failure to lodge written submission as ordered by the High Court took no appropriate step against him ignoring its own order. That decision is what has given birth to the instant application as highlighted above.

At the hearing of this application, the applicant appeared unrepresented whereas Ms. Jacqueline Chunga and Mr. Brian Magoma both learned State Attorneys appeared representing the respondent.

Before commencement of hearing of the application, we had to hear the parties on a preliminary objection (the objection) of four limbs, pursuant to rule 107 (1) and 4 (1) and (2) of the Rules filed by the respondent on 8th September, 2020. Rephrased, the objection reads thus: (i) revision having been preferred instead of appeal without legal justification exceptions being assigned, (ii) the application is incurably incompetent for non-citation of the enabling provisions of the law, (iii) the affidavit supporting the application is defective for non-disclosure of the relief sought, and (iv) that, the application is an abuse of the court process.

From the outset however, Ms. Chunga abandoned limb numbers (ii) and (iii) of the objection. He thus argued the remaining two which may be renumbered as (a) and (b).

On limb (a) of the objection, she contended that, the application is misconceived and liable to be struck out because revision is not an alternative to appeal which the applicant should have filed much as he has advanced no grounds to show that the application is exceptional to the general rule. Referring to section 57 of the Labour Institutions Act, Cap. 300 (the Act) which restricts appeals to this Court on matters involving points of law only, Ms. Chunga argued that, the reason given

by the appellant for preferring revision to an appeal are unfounded and that the application should be struck out. She cited to us our unreported decision in **Isidore Leka Shirima And Another v. The Public Service Social Security Fund** (as Successor of PSPF, PPF, LAPF and GEPF) **And 3 Others**, Civil Application No. 151 of 2016 to fortify his proposition.

To show that, from its inception the applicant knew that the appropriate step was for him to appeal the decision instead of filing revision, Ms. Chunga referred us to the notice of appeal lodged by the former in the Court on 12th February, 2020 but abandoned it. Then he filed the instant application on 11th August, 2020. She also questioned the notice of motion for not disclosing the grounds upon which the application is prefaced.

To wind up, Ms. Chunga argued that, in the circumstance the Principle of Overriding Objective cannot be invoked so blindly as proposed by the applicant. Further, she asserted that the applicant's proposal is misplaced and the application has to be struck out. To cement her point he cited **Puma Energy Tanzania Ltd v. Ruby Roadway (Tanzania) Ltd**, Civil Appeal No. 3 of 2018 in which the Court also referred to its previous decision in **Njake Enterprises Ltd**

v. Blue Rock Ltd And Another, Civil Appeal No. 69 of 2017 (both unreported).

Arguing limb (b) of the objection, Ms. Chunga contended that, if the said two avenues, appealing as indicated in the said notice of appeal and now revision are entertained simultaneously, the Court will be running the risks of ultimately giving confusing decisions resulting into chaos which should not be entertained. She thus implored us to strike out the instant application for being untenable in the circumstance.

Replying, the applicant adopted the notice of motion, the supporting affidavit and his written submission filed on 26th June, 2023. Briefly, he contended that whereas if appealed he had factual points of grievance, he thus resorted to a revisional process as an alternative because to this Court, section 57 of the Act restricts appeals on matters of law only as opposed to matters of fact. To support his stance, he cited the case of **Halais Pro- Chemie v. Wella A.G.** [1996] T.L.R. 269 and **Muhimbili National Hospital v. Constantine Victor John**, Civil Application No. 44 of 2013 (unreported). Moreover, he urged us to consider the instant application to be exceptional to the above referred general rule because of its history and the chronological events involved. Further, he implored us to invoke the Principle of Overriding Objective

bestowed on us under section 3A, rule 4(2) (2) and proviso to rule 48(1) of the Rules to ignore the alleged shortfalls in the application if any, considering the nature of the case and the time taken. Regarding the notice of appeal alongside filed by him in the Court, he urged the Court to deem it as one having been withdrawn in terms of rule 91(a) of the Rules.

We have considered the notice of motion, the applicant's affidavit, his submission, Ms. Chunga's submission and the authorities cited. The issue before us is whether this application is properly before the Court, after the High Court refused the applicant an extension of time to file revision.

We are mindful of rule 10 of the Rules which gives the High Court, at the first instance and the Court discretionary powers to grant extension of time for the doing of any act authorized under the Court rules, in this case, to file revision. Further, it is common knowledge that, under Section 4 (2) (3) of the Appellate Jurisdiction Act, 2019, this Court has that mandate in some limited but appropriate circumstances only. Confronted by a similar situation in **Halais Pro- Chemie** (supra), **Kempinski Hotels S.A v. Zamani Resorts Limited & Another**, Civil Application No. 94/14 of 2018 (unreported), **Moses J. Mwakibete v.**

The Editor – Uhuru, Shirika la Magazeti ya Chama and National Printing Co. Ltd. [1995] T.L.R. 134 to mention but few decisions of the Court, we reiterated that, revision is preferred only where the appellate process has been blocked by judicial processes or it is barred by operation of law much as revision is not an alternative to appeal.

In the present case, knowing that he had a right to appeal the impugned decision, the applicant showed his desire upfront by filing the said notice of appeal before the revision process which he initiated later pursuing the two simultaneously. It is very unfortunate that, doing so is tantamount to the applicant riding two horses at one time which is not permitted by law. However, it is trite law that revision and appeal are not alternatives to each other. See- **Halais Pro-Chemie** (supra). Now that the applicant had a right to appeal the High Court's decision therefore, in the same breath he should not have undertaken to file revision as he did. Those principles were reiterated in a number of cases including **Transport Equipment Ltd. v. D.P. Valambhia** (1995) T.L.R. 161.

In this case, as alluded before, it is common ground that the applicant has a right of appeal against the High Court's order that refused him an extension of time to file revision. Thus, it is our

considered view that, where a party, like the applicant in this application who has a right of appeal, he cannot properly move the Court to use its revisional jurisdiction otherwise it becomes frivolous. He must first exhaust all remedies provided by law before beseeching the Court to invoke its revisional jurisdiction. The applicant did not exhaust all the remedies available.

About the applicant's failure to show the grounds of the application in the notice of motion, that one needs not to take much of our time because in her submission, Ms. Chunga seems to have well appreciated the gist of the application and comprehended it much as the said notice of motion seeks revision generally.

Regarding the provisions of section 57 of the Act compelling the applicant to file the instant application as an alternative to appeal, we wish to stress that whether before the Court is a second appeal or in this case revision *ejusdem generis*, the rule against appeals on matters of fact equally applies to avoid the would be appeal or revisions in disguise. With respect, therefore, the cases of **Halais Pro- Chemie** (supra) and **Muhimbili National Hospital** cited by the applicant are distinguishable from the instant case on that issue. They defeat the applicant's proposition.

In the event and for the reasons stated above, we sustain the objection and strike out the application for being misconceived and therefore incompetent. We make no order for the costs as the application emanates from a labour dispute where ordinarily we award no costs.

Order accordingly.

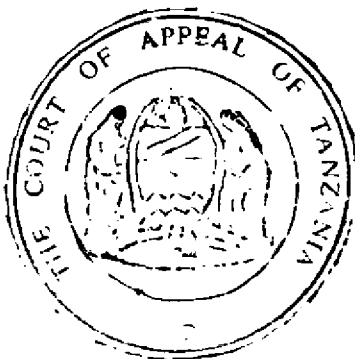
DATED at **MOSHI** this 12th day of July, 2023.

W. B. KOROSSO
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered this 12th day of July, 2023 in the presence of the applicant in person and Mr. Joseph Mauggo, learned Senior State Attorney for the respondent is hereby certified as a true copy of the original.



A handwritten signature in black ink, appearing to read "A. L. Kalegeya".

A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL