

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**(CORAM: NDIKA, J.A., KAIRO, J.A., And MURUKE, J.A.)**

**CIVIL APPLICATION NO. 150/18 OF 2022**

**JOVINE MUGOO ..... APPLICANT**

**VERSUS**

**AFRICAN BANKING CORPORATION (T) LTD. .... RESPONDENT**

**(Application for striking out notice of appeal from of the Judgment and  
Decree of the High Court of Tanzania, Labour Division  
at Dar es Salaam)**

**(Arufani, J.)**

**Dated the 11<sup>th</sup> day of February, 2022**

**in**

**Revision No. 231 of 2020**

.....

**RULING OF THE COURT**

*30<sup>th</sup> October & 8<sup>th</sup> November, 2023*

**NDIKA, J.A.:**

The respondent, African Banking Corporation (T) Ltd., partly succeeded in its revision before the High Court of Tanzania, Labour Division at Dar es Salaam ("the High Court") against the decision of the Commission for Mediation and Arbitration ("the CMA"), which had upheld a claim of unfair termination of employment instituted by the applicant, Jovine Mugoo. In effect, the High Court reduced the award of compensation made by the CMA of remuneration for twenty-four months to twelve months in the sum of TZS. 40,500,000.00. Resenting that outcome, the respondent lodged a notice of appeal on 22<sup>nd</sup> March, 2022

to manifest its intention to appeal to this Court. Nevertheless, the applicant has taken strong exception to the respondent's pursuit as he now moves us to strike out the aforesaid notice of appeal.

In support of the application, the applicant swore an affidavit and had his advocate, Mr. Raphael Dismas, lodge written submissions. On the other hand, the respondent was decidedly indifferent to the proceedings. Apart from electing to lodge no affidavit in reply, the respondent was a no-show at the hearing before us on 30<sup>th</sup> October, 2023. Upon Mr. Dismas' prayer in terms of rule 63 (2) of the Tanzania Court of Appeal Rules, 2009 ("the Rules"), and having been satisfied that the respondent defaulted appearance as it was duly served with notice of hearing on 17<sup>th</sup> October, 2023 through its advocates, Apex Attorneys (Advocates), we ordered the hearing to proceed as scheduled.

The applicant's main contention is rather straightforward; that the impugned notice of appeal, lodged on 22<sup>nd</sup> March, 2022, was time-barred. That while in terms of rule 83 (2) of the Rules, a notice of appeal ought to be lodged within thirty days of the date of the decision intended to be appealed against, in the instant matter the said period of thirty days, reckoned from 11<sup>th</sup> February, 2022 when the assailed judgment was handed down, expired long before the notice of appeal was lodged. Citing our decisions in **Dhow Mercantile (EA) Ltd. & 2**

**Others v. Registrar of Companies & 4 Others**, Civil Appeal No. 86 of 2004 (unreported) and **Emmanuel Funga v. Halmashauri ya Kijiji cha Mvumi Mission**, Civil Appeal No. 350 of 2019 [2020] TZCA 1808 [7 October 2020; TanzLII], Mr. Dismas argued that without a valid and proper notice of appeal there cannot be a competent appeal.

Without any hesitation, we find Mr. Dismas' submission unassailable. To begin with, it is settled that while sub-rule (1) of rule 83 requires any person intending to appeal to this Court to lodge a written notice of appeal in duplicate with the Registrar of the High Court, sub-rule (2) of the same rule provides in peremptory terms that such notice must be lodged within thirty days of the date of the decision against which it is desired to appeal. As rightly argued by Mr. Dismas, in the instant matter the aforesaid limitation period, reckoned from 11<sup>th</sup> February, 2022 when the decision desired to be challenged was handed down, expired long before the date on which the impugned notice of appeal was lodged. Put differently, the said period ran out on 13<sup>th</sup> March, 2022 but the notice was lodged on 22<sup>nd</sup> March, 2022, which was certainly nine days late. To be sure, this factual setting is uncontroverted since the respondent filed no affidavit in reply to challenge the depositions in support of the application. It is, therefore, ineluctable that the respondent's purported notice of appeal is invalid.

Since our jurisprudence instructs that there cannot be an appeal without a valid notice of appeal, it is logical and inferable that the respondent's intended appeal does not lie for want of a valid notice of appeal. In the premises, we grant the application. Accordingly, we strike out the respondent's notice of appeal dated 22<sup>nd</sup> March, 2022 against the decision of the High Court in Revision No. 231 of 2020. This matter being a labour dispute usually not amenable to awards of costs, we make no such order.

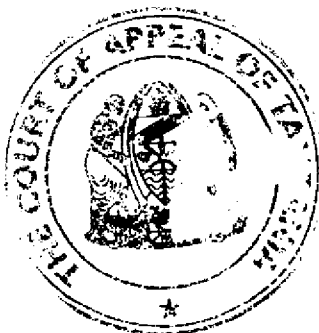
**DATED** at **DAR ES SALAAM** this 6<sup>th</sup> day of November, 2023.


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

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

Z. G. MURUKE  
**JUSTICE OF APPEAL**

The Ruling delivered this 8<sup>th</sup> day of November, 2023 in the presence of Mr. Dismas Raphael and Mr. Steven Byabato, learned advocates for the applicant and in the absence of respondent, is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**