

IN THE COURT OF APPEAL OF TANZANIA

AT IRINGA

CIVIL APPLICATION NO. 17/13 OF 2022

KIJA REDIO APPLICANT

VERSUS

TANZANIA TELECOMMUNICATION COMPANY LIMITED RESPONDENT

(Application for extension of time to lodge Notice of Appeal and to extend time within which the Applicant to lodge a letter requesting for certified copies of record, proceedings, Judgment, ruling drawn orders originating from the Judgment and decree of the High Court of Tanzania (Labour Division) at Iringa)

(Mashaka, J)

Dated the 26th day of May, 2017

in

Revision No. 61 of 2015

RULING

5th & 8th December, 2023

MGEYEKWA, J.A.:

In this omnibus application, Kija Redio, the applicant is seeking orders for the extension of time within which to lodge a notice of appeal against the decision of the High Court (Labour Division) at Iringa in Revision No. 61 of 2015, extension of time within which to lodge a letter requesting for certified copies of records, proceedings, judgment, decree, ruling and drawn orders for preparation of an appeal against the decision in Revision No. 61 of 2015,

as well as, application for leave and order the notice of appeal be filed in the name of Respondent in the designation, now Tanzania Telecommunications Corporation formerly, Tanzania Telecommunication Company Limited. The notice of motion is predicated under rules 10, 4(2) (a) and 45(a) of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by the affidavit of Kija Radio, the applicant.

On the other hand, the respondent, Tanzania Telecommunication Company Ltd lodged an affidavit in reply sworn by Matanya Chavala, Regional Manager of the respondent together with a preliminary objection that, the application is incurably incompetent and thus unmaintainable before the Court having been lodged as omnibus application.

According to the practice of this Court where there is a notice of preliminary objection raised in an appeal or application, the Court hears the preliminary objection first before allowing the appeal or application to be heard on merit. Hence, I allowed the preliminary objection to be heard first, before hearing the application on merit.

At the hearing of the application, Mr. Tazan Keneth Mwaiteleke, learned counsel appeared for the applicant while Mr. Emmanuel Nkonyi

assisted by Mr. Adelaida Ernest and Brayson Ngulo all learned State Attorneys appeared for the respondent.

In her submission in support of the point of preliminary objection, Ms. Adelaida argued that the present application is omnibus since the applicant has combined three applications among them two relating to an extension of time to file a notice of appeal and an extension of time within which to lodge a letter requesting for certified copies of records, proceedings, judgment, decree, ruling, drawn orders for preparation of an appeal against the decision in Revision No. 61 of 2015; and an application for leave and order that the notice of appeal be filed in the name of Respondent in the designation, now Tanzania Telecommunications Corporation formerly, Tanzania Telecommunication Company Limited in one application. She submitted that the Court has no jurisdiction to determine all three applications in one application. She went on to submit that the three prayers are different as they are made from different provisions of the law.

The learned State Attorney clarified that the first application is made under rule 45 of the Rules within which the applicant prays for an extension of time to lodge a notice of appeal. She added that the first prayer is within the jurisdiction of this Court and in terms of rule 60 (1) of the Rules, the

same is determined by a single Justice. Ms. Adelaida went on to submit that the second prayer cannot be determined because the same is made under rule 90 (3) of the Rules.

Regarding the third application, Ms. Adelaida contended that it is an independent prayer which is made under rule 92 (2) of the Rules, and the same is made before the full Court. To reinforce his submission, she cited the case of **Rutagatina C.L v. The Advocates Committee & Another**, Civil Application No. 98 of 2010 [2011] TZCA 143 (18 February 2011) TanzLii.

On the strength of the above submission, Ms. Adelaida argued that the application is incompetent and hence, is liable to be struck out.

In reply, Mr. Mwaiteleke resisted the preliminary objection with some force. He submitted that the application, though omnibus, is properly before the Court. He stated that the High Court declined to grant the applicant's application which contained the same prayers, thus, he had to lodge the same application as a second bite before the Court. The learned counsel contended that the first and second prayers are for extension of time and the same are determined by a single Justice in terms of rule 60 (1) of the Rules.

Mr. Mwaiteleke continued to submit that the third prayer is also determined by a single Justice and the Court can order the notice of appeal to be lodged in terms of rule 4 (2) (a) of the Rules. He distinguished the cited case of **Rutagatina C.L** (supra) from the case at hand for a reason that, in the cited case, the Court struck out the application because it combined two different prayers. Ending, he urged me to find that the Court has jurisdiction to determine the omnibus application at hand.

In her rejoinder, Ms. Adelaida reiterated her submission in chief. She valiantly contended that rule 4 (2) (a) of the Rules is inapplicable and the same cannot cure the defects. She insisted that the application is omnibus and hence incompetent before the Court. She urged me to strike out the application in the interest of justice.

Having dispassionately examined the notice of motion and the submissions for and against the preliminary objection, I am in accord with Ms. Adelaida's submission that the application is not properly before the Court because of being omnibus. The instant application combined two prayers that are solely under the domain of the single Justice together with one prayer which is entertained by the Full Court, thus, rendering the application incompetent. This stand was expounded in the case of **National**

Housing Corporation & Others vs Jing Lang Li (Civil Application No. 180 of 2016) [2016] TZCA 827 (11 July 2016) TanzLII that:

"With due respect, I do not think the two prayers, for extension of time to file supplementary record and the prayer for an order to allow the filing of supplementary record of appeal are so distinct and separate that they should be subject to two distinct and separate applications or else be condemned to be omnibus. There is no doubt in my mind that the Court has consistently held to be defective and reason of being omnibus, combination of prayers determinable by Full Court with those determinable by Single Justice of the Court".

As rightly pointed out by Ms. Adelaida, prayers (a) and (b) in the notice of motion show that, the jurisdiction of prayers (a) and (b) are different from prayer (c). The prayers (a) and (b) are predicated under rule 10 and the same are in the exclusive domain of a single Justice whereas rule 10 of the Rules empowers the Court to grant an extension of time upon the applicant advancing good reasons. On the other hand, prayer (c) in the motion is under the domain of the Full Court only and is predicated under rule 111 (1) of the Rules which prescribes the manner upon which formal application shall

be preferred before the Court. For the sake of clarity, I wish to reproduce rule 111 (1) of the Rules which provides that:

"111. The Court may at any time allow amendment of any notice of appeal or notice of cross-appeal or memorandum of appeal, as the case may be, or any other part of the record of appeal, on such terms as it thinks fit."

More so, the last prayer in the motion is not listed under rule 60(2) of the Rules. For ease of reference, I find it apposite to reproduce rule 60(1) (2) (a) (b) (c) (d) hereunder: -

"Every application other than an application included in sub-rule (2), shall be heard by a single Justice save that application may be adjourned by the Justice for determination by the Court.

*The provision of sub-rule (1) shall not apply to an application for leave to appeal; an application for a stay of execution; an application to strike out a notice of appeal or an appeal; **or an application made as ancillary to an application under paragraph (a) or (b) or made informally in the course of hearing**".*

Going by the above provision of law, it is obvious that the provision above does not provide room for a party to combine two or more applications of such nature in one application.

In view of the above circumstances, the application concerning prayer (c) ought to have been filed separately instead of lumping them together which makes it an omnibus application. See, for instance, **Rutagatina C.L.** (supra), **Ali Chamani v. Karagwe District Council and Another**, Civil Application No. 411/4 of 2017 and **Aliy Ally Mbegu Msilu v. Uma Pazi Koba (Administrator for The Decease Estate of the late Hadija Mbegu Msilu)**, Civil Application No. 316/01 of 2021 (both unreported). The effect of lodging an application in an omnibus form renders that application incurably defective. In **Mohamed Salimin v. Jumanne Omary Mapesa**, Civil Application No. 103 of 2014, the Court held:

"As this Court has held for time(s) without number an omnibus application renders the application incompetent and is liable to be struck out. . ."

Guided by the above authority, I do agree with Ms. Adelaida's submission that the present application is incompetent for being omnibus.

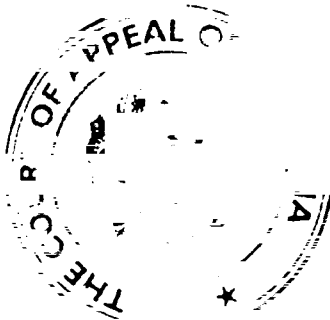
For the aforesaid reasons, I sustain the preliminary objection and hereby strike out the application without costs.

Order accordingly.

DATED at **IRINGA** this 8th day of December, 2023.

A. Z. MGEYEKWA
JUSTICE OF APPEAL

The Ruling delivered this 8th day of December, 2023 in the presence of Mr. Cosmas Babilas Masimo Holding brief for Mr. Tazan Mwaiteleke, learned Advocate for the Applicant and Mr. Bryson Ngulo, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.




R. W. CHAUNGU
**DEPUTY REGISTRAR
COURT OF APPEAL**