

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

(CORAM: JUMA, C.J., MKUYE, J.A., And MWAMPASHI, J.A.)

CIVIL APPLICATION NO. 627/08 OF 2022

LIVINGSTONE K. WILLIAM.....APPLICANT

VERSUS

CHAMA CHA WAALIMU TANZANIA (CWT).....RESPONDENT

[Application to strike out a Notice of Appeal from the Decision of the High Court of Tanzania (Labour Division) at Mwanza]

(Manyanda, J.)

dated the 16th day of April, 2021

in

Revision Application No. 13 of 2020

RULING OF THE COURT

21st & 23rd February, 2024

MWAMPASHI, J.A.:

This is an application for striking out a notice of appeal. It is brought by way of a notice of motion and it is predicated on rules 89 (2), 48 (1) and 91 (a) and (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The notice of appeal sought to be struck out was lodged by the respondent on 15.12.2021 and it is intended to challenge the decision of the High Court of Tanzania (Labour Division) at Mwanza (Manyanda, J.) dated 16.04.2021 in Revision Application No. 13 of 2020. The application is supported by an affidavit sworn by the applicant Livingstone K. William

and on the other side, in resisting the application, there is an affidavit in reply sworn by Mr. Elias R. Hezron, the learned advocate for the respondent.

According to the notice of motion, the application is premised on a single ground that:

- 1. That it is now 210 days since the respondent filed a Notice of Appeal in the registry at Mwanza BUT to-date, there is no Memorandum of Appeal and the Record of Appeal filed by the respondent.*

Very briefly, the background facts from which the instant application arises, as gathered from the record, are as follows: On 03.01.2020, the Commission for Mediation and Arbitration for Mwanza (the CMA), in Labour Dispute No. CMA/GTA/02/2019, awarded the applicant Tshs. 67,616,340/40 against the respondent. The respondent's application for revision to the High Court against the CMA award, *vide* Revision Application No. 13 of 2020, was barren of fruits. It was dismissed on 16.04.2021. Undaunted and desirous of appealing to this Court but finding that time was not on its side, the respondent successfully applied for extension of time within which to lodge a notice of appeal. Leave to do so was granted by the High Court on 10.12.2021 and on 15.12.2021 the respondent lodged the notice of appeal and duly served it on the

applicant. It is the applicant's case that upon lodging the notice of appeal and serving it to the applicant, the respondent failed to file its intended appeal hence the instant application by him which was filed on 13.07.2022.

At the hearing of the application, the applicant who was unrepresented appeared in person whereas the respondent was represented by Mr. Elias Rachuonyo Hezron, learned advocate.

When invited to argue his application, the applicant made a lengthy submission raising issues most of which were new as they were not averred in the supporting affidavit and some not relevant to the instant application. Nevertheless, the applicant reiterated his averment in paragraphs 7 and 8 of the supporting affidavit that, after lodging its notice of appeal on 15.12.2021 and serving it to him, the respondent failed to file the memorandum and record of appeal which amounts to failure to take essential steps in the furtherance of its intended appeal hence rendering the notice of appeal liable for being struck out. He insisted that the respondent has no interest in prosecuting its intended appeal and further that delaying tactics are being applied by the respondent intending

to block and delay him from executing the decree. He thus prayed for the notice of appeal to be struck out with costs.

Mr. Hezron strongly resisted the application. Having adopted the affidavit in reply he had earlier filed on 17.02.2023, he urged us to dismiss the application insisting that the respondent did not fail to take essential steps in furtherance of its appeal. He explained that the respondent lodged the notice of appeal on 15.12.2021 and duly served it on the applicant. Referring us to a letter annexed to the affidavit in reply as annexure JLC 2, Mr. Hezron submitted that, the respondent had, on 14.12.2021, applied in writing to the Deputy Registrar for a copy of all relevant record for appeal purposes and that a copy of the said letter was duly served on the applicant on 22.12.2021. He went on explaining that the requested documents were not supplied by the Deputy Registrar within the required 90 days which prompted him to send to the Deputy Registrar a reminder letter on 12.03.2022 (annexure JLC 2) followed by another such letter on 21.06.2022 (annexure JLC 3). Mr. Hezron contended that despite the said reminder letters and his physical follow ups, the requested documents were not supplied to him till on 19.07.2022 when the Deputy Registrar informed the respondent that the same were ready for collection. It was thus, argued by Mr. Hezron that by

13.07.2022, when the instant application was being filed by the applicant, the respondent was still waiting to be supplied with the requested documents without which no appeal could have been filed.

Mr. Hezron insisted that the application is baseless because the respondent took all essential steps in furtherance of its appeal. He contended that no appeal could be filed without the requested documents which were necessary documents to be included in the record of appeal as per rule 96 (1) of the Rules, having been supplied to the respondent. He also intimated to the Court that the respondent has already filed its appeal since 13.02.2023. He thus, prayed for the dismissal of the application without costs because this application arises from a labour dispute.

In his very brief rejoinder, the applicant insisted that the notice of appeal should be struck out and further that regardless of the nature of the matter from which the application arises, the respondent should be condemned to pay costs because of the costs and inconveniences the respondent is causing him to suffer.

Having examined the notice of motion and the affidavits filed in support and against the application and after considering the submissions

from the parties, the issue for our determination is whether, in the furtherance and initiation of the intended appeal, the respondent failed to take essential steps or whether the respondent took essential steps but not within the prescribed time.

Before we proceed any further, we find it apt to re-state that the Court derives its powers to strike out a notice of appeal or appeal, as the case may be, from rule 89 (2) of the Rules under which it is provided that:

“Subject to the provisions of subrule (1), any other person on whom a notice of appeal was served or ought to have been served may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice of appeal or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.”

Under rule 89 (2) of the Rules, a notice of appeal can thus, be struck out on either of the following three grounds; **One**, that no appeal lies, **two**, that some essential step in the proceedings has not been taken and **three**, that an essential step has been taken but not within the prescribed time. See, for instance, **National Housing Corporation v. Miss Lazim**

Ghodu Shekhe, Civil Application No. 134 of 2005, **Elias Marwa v. Inspector General of Police and Another**, Civil Application No. 11 of 2012, **Kaemba Katumbu v. Shule ya Sekondari Mwilamvya**, Civil Application No. 523 of 2020 and **Maryam Yahya Hussein v. Fatumata Diane Berete**, Civil Application No. 423/01 of 2022 (all unreported).

From the submissions made for and against the application, and particularly based on the explanations given by Mr. Hezron for the respondent and from annexures JLC 1, 2, 3 and 4 (a) (b) and (c) to the affidavit in reply, we, at the outset and without beating around the bush, find and satisfied that the respondent took all essential steps towards the institution of its appeal in this Court. As submitted by Mr. Hezron and exhibited by the letter sent to the Deputy Registrar dated 14.12.2021 (annexure JLC 1), even before lodging its notice of appeal on 15.12.2021, the respondent had already applied for the copy of all relevant documents for appeal purposes, from the Deputy Registrar. This demonstrates how the respondent was active and eager to pursue its appeal.

Having duly requested for the copy of all the relevant documents for appeal purposes, and after the failure by the Deputy Registrar to supply the requested documents to the respondent within the prescribed

period of 90 days as rule 90 (5) of the Rules requires, the respondent did not sit down. On 12.03.2022, the respondent sent to the Deputy Registrar the first reminder letter (annexure JLC 2). This was followed by another reminder letter on 21.06.2022 (annexure JLC 3). It is also clear from the record that by 13.07.2022 when the instant application was being filed by the applicant, the requested documents from the Deputy Registrar by the respondent had not yet been supplied to the respondent. According to the letter from the Deputy Registrar which is annexure JLC 4 (a) to the affidavit in reply, the requested documents were ready for collection on 19.07.2022.

It is thus, patently clear that when the instant application was being filed the respondent was still waiting for the requested documents to be supplied by the Deputy Registrar. It cannot be said that the respondent was idle and had taken no essential step in furtherance of its intended appeal. As rightly argued by Mr. Hezron, the requested documents which had not yet been supplied to the respondent were, as per rule 96 (1) of the Rules, necessary documents required to be contained in the record of appeal and without which the respondent could not have filed a competent appeal in this Court.

As we have alluded to earlier, we find this application devoid in merits. The respondent took all essential steps towards filing its appeal which, in fact, has already been filed since 13.02.2023 and it is pending for determination by the Court. The application is thus accordingly dismissed and because this application arose from a labour dispute, we make no order as to costs.

DATED at **MWANZA** this 22nd day of February, 2024.

I. H. JUMA
CHIEF JUSTICE

R. K. MKUYE
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Ruling delivered this 23rd day of February, 2024 in the presence of the applicant appeared in person through Video facility from High Court of Tanzania at Bukoba and Mr. Angelo James, learned counsel for the respondent, is hereby certified as a true copy of the original.



G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL