

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISC. LABOUR APPLICATION NO.24 OF 2014

PAULO SALLUTARI HAULE.....APPLICANT

VERSUS

THE DIRECTOR BUGANNO MEDICAL CENTRERESPONDENT

RULING

30/6/2014 &17/9/2014

Aboud, J

The application is made under Section 11 of the Appellate Jurisdiction Act, (Cap 141 R.E 2002), Order XLIII Rule 2 and Section 95 of the Civil Procedure Act (Cap 33 R.E 2002) and any other enabling provision of the law. The applicant sought to move the court for the following orders;

- a) That this honourable court be please to grant an extension of time to lodge notice of appeal from the decision of Judge Shayo J. dated 8th Day of October 2010.
- b) That the honourable court be pleased to grant an extension of time to file an application for leave to appeal.

The dispute revolves around an employment relationship involving the applicant and the respondent. The applicant herein was an employee of the respondent since 1/9/1993 as a chef until and launderer until 8/10/2005 when he was terminated by the respondent. On 7/1/2008 the applicant referred a Labour dispute before the Commission for Mediation and Arbitration (CMA) claiming to be reinstated and compensation of Ths.1,952,250/=. The CMA dismissed the dispute for lack of jurisdiction because the cause of action aroused before the Employment and Labour Relations Act, No.6 of 2004 came in force. The applicant filed an application before the court which was also dismissed by Hon. Shayo, J on 8/10/2010 for the same reason of jurisdiction. Dissatisfied with the ruling of Hon. Shayo, J. the applicant filed another application before the court praying for extension of time to file application for revision of the ruling of Hon. Shayo, J. That application was as well dismissed by Hon. Moshi J. for several reasons the major being that the court is *functus officio* to revise its own decision. The applicant now decided to file the present application for extension of time to appeal against the ruling and order of Hon. Shayo, J.

The respondent in his Counter Affidavit raised three points of preliminary objection on point of law that;

1. That the Application in question is misconceived and bad in law for wrong citation of laws and as a results, this Hon. Court has not been properly moved;
2. That the captioned Application is unknown to law for being made out by a Notice of Application as well as a Chamber Summons at the same time both the Notice and Chamber Summons supported by one Affidavit in one Application;
3. That the Applicant's Notice of Application is incurably defective for failure to meet and incorporate in it the mandatory requirements/contents provided for under Rule 24(2)(e) of the Labour Court Rules G.N. No. 106/2007;

At the hearing the applicant who enjoyed the assistance of Legal Aid appeared in person while Mr. Anaclet Kamara, Advocate appeared for the respondent.

The court ordered parties to argue the preliminary objections by way of written submissions which both parties complied with.

Arguing on the first point of preliminary objection Mr. Anaclet Kamara, Learned counsel for the respondent submitted that the applicant failed to cite properly the law in the Notice of

Application where he cited Rule 24 (1) of the Labour Court Rules, instead of Rule 24 (1) of the Labour Court Rules, GN. NO.106 of 2007. He submitted further that the applicant failed to file a specific provision of the Labour Court Rules which moves the court for the application sought. He thus prayed for the court to struck out the application for wrong and non-citation of the law. He supported his argument with various cases one being the case of **Edward Bachwa & Another VS. The Attorney General & Another Civil Application No. 128 of 2006 (CA) DSM (unreported)**.

Respondent to the respondent's counsel submission on the first point of preliminary objection the applicant submitted that Rule 24 of the Labour Court rules is guiding rule on the nature of the applications to be made before the court while Rule 56 (1) of the Labour Court rules is a directory provision to this Honorable Court. To my understanding the applicant is of the opinion that Rule 11 (1) of the Appellate Jurisdiction Act is the appropriate enabling provision to move the court thus there is no need to move the court with rule 56 (1) of the Labour Court Rules.

The law under Rule 56 (1) of the Labour Court Rules provides that, I quote;

"The court may extend or abridge any period prescribed by these rules on application and on good case shown, unless the court is precluded from doing so by any written law."

The established principle in law is that, failure to cite proper provision or incomplete citation of enabling provisions of the law makes an application incompetent, with the only remedy being, to struck out as was decided by the Court of Appeal in the case of **Edward Bachwa & Another** supra, where the court held;

"The answer is found in unbroken chain of authorities to the effect that wrong citation of the law, section, subsection or paragraph of the law or non-citation of the law will not move the court to do what is asked and renders the application incompetent."

The Court of Appeal also held in the case of **Bahadir Sharif Rashid and 2others vs. Mansour Sharif Rashid and Another, Civil Application No.127 of 2006, CAT** that;

"...an applicant must state the specific provision of the law under which the

Applicant wants to move the court to exercise its jurisdiction."

The above position was reiterated in the case of **Chama cha Walimu Tanzania vs. AG, Civil Application No.15 of 2008 (CAT), (Unreported)** where the Court of Appeal emphasized its long held position that;

"...the omission in citing the proper provision of the rule relating to a reference and worse still the error in citing a wrong and inapplicable rule in support of the application is not in our view, a technicality falling within the scope and provision of Article 107A(2) (e) of the Constitution. It is a matter which goes to the very root of the matter. We reject the contention that the error was technical."

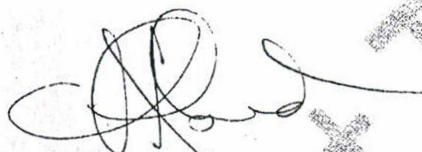
In the present application the applicant moved the court with Section 11 of the Appellate Jurisdiction Act, (Cap 141 R.E 2002), Order XLIII Rule 2 and Section 95 of the Civil Procedure Act (Cap 33 R.E 2002). I have considered the applicant's submission and I do not agree that Section 11 of the Appellate

Jurisdiction Act is the appropriate provision to move this court. With due respect Section 11 (1) of the Appellate Jurisdiction Act, has nothing to do with this application because such provision gives powers to the Registrar of the Court of Appeal or Registrar of the High Court to reject documents which does not comply with the requirement of rule 10 of the Court of Appeal Rules which gives powers to the Court of Appeal to extend time when good cause is shown. Therefore, it is my view that the power to entertain an application for extension of time before this court is specifically provided under Rule 56 (1) of the Labour Court Rules cited above.

As regard to the provisions of Order XLIII Rule 2 and section 95 of the Civil Procedure Code (Cap 33 R.E 2002) cited by the applicant, I am of the view that they are not applicable in this court unless there is a lacuna in Labour Laws as provided for under Rule 55 (1) of the Labour Court Rules, G.N.106 OF 2007.

In circumstance that the application has the noted irregularity, I have no other alternative than to find this application incompetent and cannot move the court to entertain and determine it.

In the result the application is struck out. In the interest of justice however, I grant the applicant another opportunity to file a proper application within fourteen (14) days from the date of delivery of this Ruling or receipt of the same.



I.D.ABOUD

JUDGE

17/9/2014

Labour Court 17

Date: 17/9/2014

Coram: Hon. I.D.Aboud,J

Applicant: Present

For Applicant

Respondent:

For Respondent: Mr. A. Kamara, Advocate

CC: G. Mushi

Order: Ruling delivered on 17/9/2014 in the presence of the Applicant and Mr. A. Kamara, Advocate for the Respondent.



I.D.Aboud

JUDGE

17/9/2014