

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 391 OF 2017

TUICO ON BEHALF OF ALLY IDDI MUSSA.....APPLICANT

VERSUS

TANESCO..... RESPONDENT

RULING

Date of last Order: 23rd April 2018

Date of Ruling: 4th May 2018

SAMEJI R.K, J.

In this Application, the applicant, Ally Iddi Mussa seeks the order of this Court to grant leave to appeal to the Court of Appeal against the Judgment and Decree of this Court in *Misc. Civil Appeal No. 93 of 2006*. The Application is brought under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 [R. E. 2002] (Hereinafter referred to as the Act) and Rule 45 (b) of the Court of Appeal Rules, 2009 (Hereinafter referred to as the Rules).

At the hearing of the Application the applicant was represented by Mr. Mathew Bernard Kabunga, the learned Counsel, while Mr. Msefya Howi, the learned Counsel represented the respondent.

Submitting in support of the Application, Mr. Kabunga argued that, the main reasons for the appeal are indicated under paragraph 6 of the Affidavit in support of the Application. Mr. Kabunga said, there was a failure of justice by the Court as the evidence adduced was not properly evaluated. That, he now wants to pursue the matter before the Court of Appeal for the reasons that, under paragraph (c) of the award all workers who were in dispute were ordered to be reinstated except the applicant.

In response Mr. Howi argued that, the appeal which was determined by this court based on three grounds which was finally determined as per the law save that grounds 2 and 3 of the appeal was abandoned. He added that, the only ground which was argued and determined by the High Court was only the first ground and he said, the issue planned to be raised by the applicant before the Court of Appeal was not discussed by the High Court and the same cannot be raised at that level.

I have carefully perused the Application before me and on the date set for the Ruling before analyzing the issues raised herewith, I requested Mr. Kabunga to address the Court on the competence of the Application in terms of Rule 49 (3) of the Court of Appeal Rules, 2009. Mr. Kabunga after perusing the provision of the law noted that, the Application was filed in Court without being accompanied with the necessary documents i.e copies of Judgement appealed against. He thus submitted that the Application is incompetent before the Court.

To clarify on this matter, Rule 49 (3) of the Court of Appeal Rules 2009 which provides inter alia that;

*"Every application for leave to appeal **shall be accompanied by a copy of the decision against which it is desired to appeal** and where application has been made to the High Court for leave to appeal **by a copy of the order of the High Court**". [Emphasis added].*

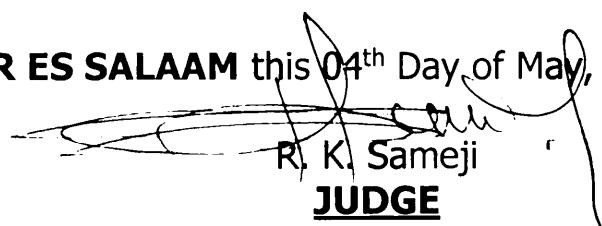
Since the law stipulates clearly and in mandatory term that filling of the Application for leave ought to be accompanied with the decision intended to be appealed against, therefore the failure by the applicant to comply

with that legal requirement had since rendered this Application incompetent before the Court.

In the event, I declare that the *Misc. Civil Application No. 391 of 2017* filed in this Court without following the mandatory requirement of the law is incompetent and is hereby struck out. Considering the nature of this case, I make no order as to costs.

It is so ordered.

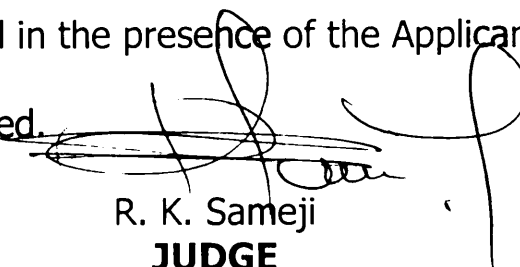
DATED at **DAR ES SALAAM** this 04th Day of May, 2018.



R. K. Sameji
JUDGE
04/05/2018

COURT - Ruling Delivered in Court Chambers in the presence of Mr. Mathew Bernard Kabunga, the learned Counsel for the Applicant and in the presence of the Applicant.

A right of Appeal explained.



R. K. Sameji
JUDGE
04/05/2018