

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MUSOMA

MISCELLANEOUS LABOUR APPLICATION NO 10 OF 2020

BETWEEN

MAGNET CONSTRUCTION LIMITED _____APPLICANT

VERSUS

BRUCE WALLACE JONES _____RESPONDENT

(Arising from the decision and orders of the High Court of Tanzania Musoma district registry at Musoma Galeba J. in miscellaneous labour application no 3 of 2020 dated 26.06.2020)

RULING

Dates; 26th August & 25th September 2020


GALEBA J.

This is an application for leave to appeal to the Court of Appeal of Tanzania. When this application was filed, the application papers were served on to Mr. Christopher Waikama, learned advocate who was appearing for the respondent in miscellaneous labour application no 3 of 2020. He accepted service and did nothing; he did not file a counter affidavit. On 26.08.2020 when this application was called for hearing at 9.30am, no party appeared for respondent. Upon an application by the Ms. Noelina Bippa Ibrahim, learned advocate for the applicant, I permitted the application to proceed **ex parte** after I was satisfied that the respondent was

served through Mr. Waikama. After the **ex parte** order was passed, Mr. Waikama appeared in the open court where the proceedings were being conducted. Although he had come to court for that case, but he informed the court that the court can proceed **ex parte** because, after receiving the document he did not manage to communicate with his client. Although I noted that Mr. Waikama did not handle his clients' case with the high degree of professionalism required, I proceeded to hear the application while Mr. Waikama was in attendance although outside the formal **coram**.

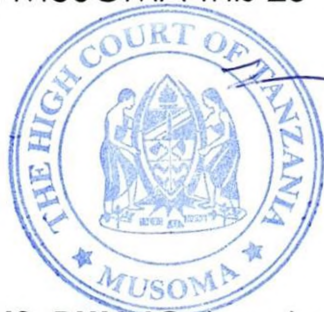
Ms. Bippa submitted that as a matter of law for the high court to grant leave, there must be a substantial question of law worthy consideration by the Court of Appeal. She submitted that the points to be considered by the Court of Appeal are; whether service of a summons can be effected by short message service (sms), the other point is whether in the absence of an affidavit of service, a party can be deemed to be served via sms, and thirdly, is whether an illegality on the original decision cannot be argued for the court to extend time in a miscellaneous application relating to and or arising from the original decision.

Although leave to appeal is not automatic, as per the case of **British Broadcasting Corporation Versus Eric Sikujua Ng'maryo** civil application no. 138 of 2004, but the above grounds raised, to some extent are arguable points.



In the circumstance, this application is allowed and leave to appeal to the Court of Appeal is hereby is granted.

DATED at MUSOMA this 25th September 2020



Z. N. Galeba
JUDGE
25.09.2020

Court; THIS RULING has been delivered today the 25th September 2020 in the absence of parties but with leave not to enter appearance.

The signed ruling and the drawn order are both ready for collection free of charge from the court registry today the 25th September 2020.



Z. N. Galeba
JUDGE
25.09.2020