

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

MISC. CIVIL APPLICATION NO. 2 OF 2022

(Arising from Civil Revision No 2 of 2021)

KAHAMA MINING CORPORATION LIMITEDAPPLICANT

VERSUS

PATROBERT ISHENGOMA..... RESPONDENT

RULING

27th April & 27th May 2022

MKWIZU, J.

The Applicant, KAHAMA MINING CORPORATION LIMITED is aggrieved by the decision of this court in Civil Revision No. 2 of 2021 dated 13/12/2021 and has preferred this application for leave to appeal to the Court of Appeal. The background facts of the matter as deciphered from the records are that, on 13/10/2003 the respondent's employment termination by the respondent was confirmed by the Labour conciliation Board on the ground that employer had a valid and fair grounds of termination with an additional of two orders. Provision of medical services to the respondent on the applicant's costs and it's also suspended respondent's repatriation payment by the applicant pending final medical report.

The Minister for labour, on an appeal preferred by the respondent confirmed the termination effective from the date of termination with an order for payment of all his terminal benefits. It is also deposed by the

applicant that, final medical report by the Muhimbili National Hospital regarding the Respondent's health condition as ordered by the Labour Conciliation Board was issued sometimes in 2011 followed by the institution of execution proceedings before the Shinyanga RMs Court of the two application No 18 of 2019 , in respect of the labour Conciliation Board's decision where a total sum of 4,488,258, 800/ comprising of subsistence allowance for the applicant and his family from the date of termination to the date of actual repatriation, repatriation costs, medical expenses, actual damages compensation of hearing loss, general damages compensation and NSSF premium injury contribution . And Application No. 19 of 2019 in respect of the Ministers decision where a total figure was 3,120,091,692 comprising of salary arrears, annual leave and subsistence allowances. The claims in execution application No 18/2019 were refused while that in Execution application No 19 of 2019 were granted.

Applicant was unhappy, she challenged the decision of the RMs court through revision before this Court. Unfortunately, the said revision application was 13/12/2021 struck out for being incompetent. Applicant is still uncomfortable and wishes to appeal to the Court of Appeal hence this application for leave to Appeal made under section 5(1) (c) of the Appellate Jurisdiction Act [CAP 141 R.E 2019] and Rule 45 of the Tanzania Court of Appeal Rules, 2009. The Respondent filed a counter affidavit resisting the application.

The court ordered that the application be argued by the way of written submissions. Both parties did as require filed their written submissions. In his main submission, the applicant counsel prayed to adopt the affidavit in support of the application. Citing the case of **British Broadcasting**

Corporation V Eric Sikujua Ng'amaryo, Civil Application No 138 of 2004, (Unreported) he said, the grounds of appeal itemized in paragraph 18 of the affidavit meets the criterial for granting leave to appeal to the Court of Appeal as they disclose a novel point of law and a prima facie or arguable case, and they stand reasonable chances of success.

In his reply to submissions, respondent argued that, in an application for leave to appeal to the Court of Appeal, the court must ascertain if there is a legal point worth of being considered by the Court of Appeal and whether the appeal stands chances of success. He on this point relied on the decisions of **Kumbwandumi Ndemfoo Ndossi V Mtei Bus service Limited**(CAT) Civil Application No 27/02/2016 (unreported);**Kalunga and Company Advocates V NBC**, (CAT) Civil Application No 124/2005; **Mpungu Erasto Daima Sanga V Peter Mwonga**,(HC) Misc Land Application No 66 of 2019(All unreported) and **Sons Transporters Limited V Attorney General and Another** (2006) I EA212) .

He contended further that, the grant of leave to appeal to the Court of Appeal is the discretion of the Court which must be applied judiciously. And that the applicant application has failed to demonstrate the any issue of general importance, novel point of law, prima facie case or reasonable chances of success upon which the application could be granted. He, for that reason urged the court to refuse the prayer.

The applicant's rejoinder submissions are essential a reiteration of his submissions in chief that there are points of law in this matter worth of consideration by the Court of Appeal as deposed in the affidavit

supporting the application plus a concession that the cited cases by the respondent speak the legal position of the law on the matter at issue.

My duty as explained in the cited cases by the parties above is only limited to determine whether the application raises issues of general importance or novel points of law or prima-facie arguable appeal for Court of Appeal's consideration. Paragraph 18 of the affidavit in support of the application has itemized five grounds of appeal that:

- 1. The High Court erred in law and in fact for not holding that in the proceedings for execution of the Labour Conciliation Board decision and the Minister for the Labour order, the Resident Magistrate's court was not exercising original jurisdiction.*
- 2. To the extent that the Resident Magistrates' Court was not exercising original jurisdiction, the High Court erred in law and fact in holding that the remedy to challenge the decision of the said Resident Magistrate's court was through appeal.*
- 3. The High Court erred in law and in fact in relying on Court's decisions which did not consider and determine the issue of a right of appeal against Resident Magistrates' court decisions arising from proceedings in execution of the Labour Conciliation Boards decision and the Minister for labour order.*
- 4. The High Court erred in law and in fact for holding that the Applicant's application for revision against the decision of the Resident Magistrate's Court was incompetent*


5. The High Court erred in law and in fact in dismissing the application for being incompetent instead of striking it.

I have subjected the above grounds together with the complained decision of this courts into scrutiny. I find the grounds raised, points of law and of sufficient importance for the court of appeals consideration.

Consequently, the application is granted. Costs to be in the course.

DATED at **SHINYANGA** this 27th day of **May** 2022.




E.Y MKWIZU
JUDGE
27/5/2022