

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA**

MISC. CIVIL APPLICATION NO. 17 OF 2022

(From the Decision of the High Court of Tanzania, at Mbeya in Misc. Civil Application No. 04 of 2014, Originated in the Court of Resident Magistrates of Mbeya, at Mbeya in Civil Application No. 4 of 1998.).

JUMA BUSIYA.....APPLICANT

VERSUS

- 1. ZONAL MANAGER, SOUTH TANZANIA
POSTAL CORPORATION**
- 2. THE SOLICITOR GENERAL**

}.....**RESPONDENTS**

RULING

Date of last Order: 03.08.2022

Date of Ruling: 26.08.2022

Ebrahim, J.

Since 1998 the applicant JUMA BUSIYA has been tirelessly in the courts' corridors seeking his right. The genesis of this matter is the termination of the applicant from employment by SOUTH TANZANIA POSTAL CORPORATION (the 1st respondent) in 1994. Aggrieved by the termination, the applicant successfully appealed to the Minister for Labour who directed the 1st

Respondent to reinstate him. The 1st Respondent however, did not honour the instruction, she opted to pay the applicant statutory compensation. Dissatisfied, the applicant sued in the Court of Resident Magistrates of Mbeya whereby he lost. He appealed to this Court where he also lost, but on technicalities.

Still aggrieved he appealed to the Court of Appeal. There, it was ordered the matter be remitted back to this Court to be determined on merits. Nonetheless, at the High Court, the matter was struck out on the ground that it was not accompanied by a copy of drawn order contrary to the law. In making sure that he re-files the struck-out appeal, he applied for extension of time vide Misc. Civil Application No. 20 of 2014. The main reason in that application for extension of time was that he was delayed to be availed with a copy of the drawn order. Unfortunately, the same was dismissed for want of merits.

The Applicant is now seeking leave of this court to appeal to the Court of Appeal to challenge the decision of this court which dismissed his application in Misc. Application No. 20 of 2014. The Application is made under **section 5 (1) (c) of the Appellate**

Jurisdiction Act, Cap. 141 R.E. 2019. It is supported by an affidavit of Mr. Justinian Mushokorwa, Counsel for the applicant.

On the other side, Mr. Rogers Francis, learned Senior State Attorney represented both respondents.

When parties were invited to argue the application, Mr. Rogers for the respondents told this court that he does not protest it since it is an old case. He however urged this court to grant the same if it fulfills the requisite criteria.

On his part, Mr. Mushokorwa prayed for this court to grant the application on the grounds given in the affidavit supporting the application.

This court is therefore tasked to determine whether the application at hand is meritorious. As a matter of general principle, leave to appeal is not automatic. The factors for considering grant of leave by the court are stipulated in the case of **Rutagatina C.L v. The Advocates Committee & Another**, Civil Application No 98 of 2010 (Unreported) that quoted with approval the case of **British Broadcasting Corporation vs Eric Sikujua Ng'maryo**, Civil Application No. 133 of 2004 (unreported). It is thus, the

requirement of the law that leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal. However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted.

In its words, the CAT in **Harban Haji and Another Vs. Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997 (unreported) clearly stated that:

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole revealed such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the specter of unmeritorious matters and to enable it to give adequate attention to cases of true public importance"

From the above quotation, leave is granted where there are prima facie grounds meriting an appeal before the Court of Appeal. The essence of leave is to ensure that the Court of Appeal is saved from the menace of unmeritorious matters and

wisely concentrate on matters of public importance, law, and or contentious issues that need its guidance.

As to the instant application, I have thoroughly gone through the affidavit particularly para 3 (a) and (c). The complaints are that; the impugned ruling was bad in law by ignoring the admitted fact that the Applicant had failed to attach a copy of the drawn order to his memorandum of appeal which he had applied for but was not yet supplied to him by the court registry which otherwise amounted to sufficient cause for delay. Also that the Honourable Judge did not consider the fact that it was a serious and very involving labour dispute which moved the Court of Appeal in Civil Appeal No. 4 of 2005 to order the dispute to be remitted to the High Court to be heard on merits.

In my view, the pointed-out grounds are disturbing features worthy for determination by the Court of Appeal. This is because, the Court of Appeal will be in the position to scrutinize and find out if verily the applicant had evidence that he was delayed to be availed with a copy of drawn order by the court registry. The Court of Appeal will also resolve the issue whether the matter is

serious and very involving labour dispute which should not be left unresolved to its finality.

In the circumstance, I proceed to grant the applicant the leave to appeal sought in this application. Regarding the nature of this matter I make no order as to costs.

Accordingly ordered.

Mbeya
26.08.2022



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim", is written over a circular stamp that partially overlaps the court seal.

R.A. Ebrahim

JUDGE