

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

MISCELLANEOUS APPLICATION NO. 343 OF 2022

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED.....APPLICANT

VERSUS

IBRAHIM MSAFIRI SALEHE.....RESPONDENT

RULING

K.T.R. MTEULE, J.

3rd November 2022 & 4th November 2022

This is an application seeking for this court to extend time for the applicant to lodge review against the decision of this court dated 7th November 2017.

The respondent raised a preliminary objection to asserting that the applicant cannot seek review since there is a notice of appeal lodged against the decision sought to be reviewed.

According to the Applicant, there is a notice of Appeal filed in this Court on 20/8/2020. This being the case, in his view, this Application No. 343 of 2022 is wrongly filed. The Applicant supplied the court with the Notice of Appeal dated 20 August 2020 and a letter by the applicant written to this Court to request copies of proceedings,

ruling, drawn order of the decision on which review is sought while making reference to the Notice of Appeal dated 20 August 2020.

MR. MKUMBO ADVOCATE for the respondent responded that he does not have any information about the supplied notice of appeal. In his knowledge there is no notice of appeal in this court. He recalled that, the applicant has once filed a notice of appeal on 5th December 2017 but it was withdrawn to allow review application. Mr. Mkumbo supplied the court with the notice of appeal dated 5th December 2017 and its withdrawal order dated 7th June 2022.

Having considered the parties submissions I have noted that Mr. Mkumbo was taken by surprise as he did not know that there was a notice of appeal lodged by the applicant on 25th August 2020. Since the notice was produced by the applicant bearing the seal of the court indicating to have been received, I have no reason not to take note of it. The respondent did not dispute it's authenticity but just declared that he knew nothing about it.

It is an established principle that a party cannot prefer both appeal and review at the same time. Review is only allowed when no appeal is preferred. In this respect, having a notice of appeal filed indicating that the applicant has preferred appeal against the decision sought to

be reviewed, this review application cannot go parallel with an appeal.

In this respect, the preliminary objection is hereby upheld. This Application is therefore struck out for being incompetent. It is so ordered.

Dated at Dar es Salaam this 4th Day November 2022



KATARINA REVOCATI MTEULE

JUDGE

4/11/2022