

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

MISCELLANEOUS LABOUR APPLICATION. 200 OF 2021

*(From the Decision of High Court Labour Division at Dar es Salaam (Aboud, J.),
Dated 16th April 2021)*

BETWEEN

ELIAS AUGUSTINE APPLICANT

VERSUS

THE CHIEF SECRETARY,

PRESIDENT'S OFFICE1ST RESPONDENT

THE PUBLIC SERVICE COMMISSION.....2ND RESPONDENT

THE SHINYANGA MUNICIPAL COUNCIL.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

RULING

22nd April, 2022 & 06th May, 2022

K. T. R. MTEULE, J.

This is an application for extension of time to allow the applicant to lodge application for leave to appeal to the Court of Appeal against the Decision of the Labour Court delivered by Hon. I. Aboud, J. on 16th April, 2021. The Applicant **ELIAS AUGUSTINE** prays for the order of the Court in the following terms:-

1. That, this Honourable Court be pleased to extend time to allow the applicant to lodge an application for leave to appeal to the Court of Appeal of Tanzania against the

- decision of the Labour Division of the High Court of Tanzania at Dar es Salaam in Miscellaneous Labour Application No. 488 of 2019 before Hon. I. Aboud, J. dated 16th April, 2021;
2. Cost of this Application be provided for;
 3. Any other or further order this Honourable Court may deem fit and equitable to grant in the interest of justice.

The applicant's affidavit was filed to support the application. Opposing the application, the respondent filed a joint counter affidavit sworn by Cause K. Izina, the respondents' State Attorney.

The brief background of the dispute is explained hereunder. The Applicant was an employee of the 3rd Respondent. He was originally employed on 6th December, 2003 as a Land Officer. On 5th July, 2010 he was promoted to become a Principal Land Officer Grade I, before being charged for Disciplinary Offence by the Shinyanga Municipal Council. After Disciplinary hearings he was demoted to Land Officer Grade III. Not satisfied with the decision he appealed to the Public Service Commission and ultimately to the Chief Secretary who acts on behalf of the President.

On appellate stage another offence was added which triggered the termination of the Applicant's employment. Being aggrieved by the

decision of the Public Service Commission, the applicant filed an application at this Court requesting for an order of certiorari, mandamus, and any other order. That application was dismissed for lacking merits. The Applicant wants to appeal to the Court of Appeal against that decision, and he wants to seek the leave of this Court to appeal but he is time barred, hence the present application seeking for extension of time to lodge an application for leave to appeal.

The Applicant sworn an affidavit which contained various facts to explain the reasons of the delay. The Applicant advanced reasons such as sickness, discussion with advocate, issues of public policy asserted to be in the contents of the decision of the judge.

Through a counter affidavit, the Respondent disputed the material facts of the affidavit. The Respondent alleged negligence on the part of the applicant and challenged the validity of his statement of sickness.

The application was heard by oral submissions. I appreciate parties' rival submissions which will be considered in this ruling.

Basing on the nature of the intended application, before venturing into the merit or demerits of it, I find it worth to determine whether it

is the requirement of the law to file application for leave to appeal against the decision of the Labour Court.

Appeal from the decision of this Court is Governed by the provision **Section 57 of the Labour Institution Act, No. 7 of 2004** which provides:-

"Any party to the proceedings in the Labour Court may appeal against the decision of that Court to the Court of Appeal of Tanzania on a point of law only."

Apparently, the provision quoted above does not require the applicant to file application for leave to file appeal against the decision of this Court. The above provision has been interpreted in the case of **Remigious Muganga v. Barrick Bulyanhulu Gold Mine**, Civil Appeal No. 47 of 2017, Court of Appeal of Tanzania, at Mwanza (unreported). It was held that:-

"...we are unable to agree with him that the appellant was required to obtain leave before he lodged the appeal. The section gives a party to "the proceedings in the Labour Court" unfettered right to appeal to this Court. The provision does not restrict that right to the decisions made under any specified laws. It allows a party to the proceedings conducted in the

Labour Court to appeal regardless of the law under which those proceedings were based. The only restriction is that the appeal must be on a point of law only. The section is couched in a way that it accommodates any proceeding conducted in the Labour Court."

The Court went further at page 9 of the same case by emphasizing:-

"On the basis of the considerations made above, it is our view that the section allows a party, who is aggrieved by any appealable decision arising from the proceedings of the Labour Court, to appeal without recourse to the provisions of S. 5 (1) (c) of the AJA, notwithstanding that the proceeding giving rise to that decision was taken under the CPC."

In line with the case of **Remigious Muganga** cited above which interpreted the provision of **Section 57 of the Labour Institutions Act**, it is obvious that there is no legal requirement to seek leave to appeal against a decision of the High Court Labour Division to the Court of Appeal. It is my view that the applicant was not required to file this application for leave to appeal against the decision of this Court. Thus, on the foregoing, I find the present application superfluous. Having found no legal requirement to have this

application filed, the said Application is hereby declared redundant. It is so ordered.

Dated at Dar es Salaam this 06th day of May, 2022.



KATARINA REVOCATI MTEULE

JUDGE

06/05/2022