

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

(CORAM: MUGASHA, J.A., WAMBALI, J.A., and KEREFU, J.A.)

CIVIL APPEAL NO. 02 OF 2016

ALEX LWABWINA .....APPELLANT

VERSUS

BP TANZANIA LIMITED.....RESPONDENT

(Appeal from the Decision of the High Court, Labour Division)  
At Dar es Salaam

(Moshi, J)

dated the 26<sup>th</sup> day of August, 2011  
in  
Labour Revision No. 215 of 2010

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**RULING OF THE COURT**

10<sup>th</sup> & 21<sup>st</sup> June ,2019

**KEREFU, J.A.:**

The appellant, Alex Lwabwina lodged this appeal on 6<sup>th</sup> January 2016 challenging the decision of the High Court of Tanzania, Labour Division, (*the High Court*), (Moshi, J) dated 26<sup>th</sup> August 2011 in *Labour Revision No. 215 of 2010*. In the said Revision the High Court, varied the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. *CMA/DSM/TEM/295/2009* dated 29<sup>th</sup> July 2010. Aggrieved by that decision, the appellant decided to lodge this appeal. In the Memorandum

of Appeal the appellant has indicated four grounds of appeal. However, for reason which will be apparent shortly, we do not deem it appropriate, for the purpose of this ruling, to reproduce them herein below.

However, for purposes of appreciating the decision we are going to make, we find it appropriate to recapitulate the facts of the dispute which led to this appeal. On 1<sup>st</sup> November, 1989 the appellant entered into a fixed term employment contract with the respondent. He held a position of shift supervisor. Having worked for twenty (20) years of service, on 5<sup>th</sup> August 2009 the appellant issued to his employer, (the respondent) a one month notice of resignation from his employment. His resignation notice was accepted and after its expiration on 4<sup>th</sup> September 2009 he resigned from the said employment. Following his resignation, the appellant claimed for terminal benefits, repatriation expenses for himself, his family and personal effects from Dar es Salaam (*place of recruitment*) to Muleba-Kagera, (*place of domicile*). He also claimed to be paid night allowances. The respondent refused to cover the repatriation expenses to Muleba-Kagera as he claimed that the appellant was recruited in Dar es Salaam. He also refused to pay the night allowances on the reason that the appellant had not submitted any evidence to prove the same. In its decision dated

29<sup>th</sup> July, 2010, the CMA found that the appellant was entitled to repatriation expenses from Dar es Salaam to Muleba-Kagera at the tune of Tshs 2,610,390/= and subsistence allowances as per his salary's scale. The respondent was aggrieved by the decision of the CMA and appealed to the High Court. On 26<sup>th</sup> August, 2011 the High Court allowed the appeal and set aside the decision of the CMA.

At the hearing of the appeal, the appellant appeared in person, unrepresented, while the respondent had the services of Ms. Samah Salah, learned counsel.

The Court *suo motu* requested the parties to address it on the propriety of the notice of appeal which was lodged on 12<sup>th</sup> December, 2014, three years and four months from the date of the decision of the High Court which was delivered on 26<sup>th</sup> August, 2011.

In his submission, the appellant being a layperson did not have much to submit on this legal issue. Though, he admitted that the decision of the High Court was delivered on 26<sup>th</sup> August, 2011 and he lodged the notice of appeal on 12<sup>th</sup> December, 2014, but he insisted that the appeal was lodged within the prescribed time. Upon being prompted as whether

he had lodged an application for extension of time, the appellant responded that, he approached the High Court and there were several meetings and consultations, where in some cases he was told that he had submitted incompetent applications and finally he was informed that, there is no need to seek for the leave to appeal to this Court. He however noted that, in the record of the appeal there is no application or decision of the High Court to reflect on the said meetings, incompetent applications and, or consultations.

On her part, Ms. Salah readily conceded that the appeal is not properly lodged before the Court, as she said, the notice of appeal was lodged out of time. Ms. Salah clarified that, the decision sought to be challenged was delivered on 26<sup>th</sup> August, 2011 and the notice of appeal was lodged on 12<sup>th</sup> December, 2014, after lapse of more than three years and four months contrary to Rule 83 (2) of the Tanzania Court of Appeal Rules, 2009 GN. No. 368 of 2009 as amended by the Tanzania Court of Appeal (Amendments) Rules, 2017 GN. No. 362 of 2017 (*the Rules*), which require the notice of appeal to be lodged within thirty days from the date of the decision.

Ms. Salah submitted further that, after going through the written submission filed by the appellant on 2<sup>nd</sup> March, 2016, it is clear that, the appellant is aware that he lodged the notice of appeal out of time, because instead of submitting on the grounds of the appeal he gave reasons to justify the delay and prayed to be allowed to file the appeal out of time. She further argued that, though the appellant is aware that he was out of time, but he did not seek and obtain extension of time to file the notice of appeal out of time. Based on her submission, she asked the Court to find that, as the notice of appeal was lodged out of the thirty days prescribed by the law it has thus rendered the entire appeal incompetent and liable to be struck out.

In rejoinder submission, the appellant reiterated what he submitted in chief and emphasized that the appeal was lodged within time.

Having examined the record of the appeal and considered the submissions made by the parties, we entirely subscribe to the submission by Ms. Salah that the appeal is not properly lodged before the Court. We wish to emphasize that, pursuant to Rule 83 (1) and (2) of the Rules, a notice of appeal is required to be lodged within thirty days from the date of

decision appealed against. For the sake of clarity the said Rules provides that:-

- (1) *Any person who desires to appeal to the Court **shall lodge a written notice in duplicate with the Registrar of the High Court;***
- (2) ***Every notice shall, subject to the provisions of Rules 91 and 93, be so lodged within thirty days of the date of the decision against which it is desired to appeal.***  
*[Emphasis added].*

Reading the contents of the above provisions between lines, we have no doubt that the appellant was required to lodge his notice of appeal within thirty days from the date of the impugned decision. However, it is on record and, as eloquently submitted by Ms. Salah that the decision of the High Court was delivered on 26<sup>th</sup> August, 2011 and the notice of appeal was lodged on 12<sup>th</sup> December, 2014, after lapse of more than three years and four months contrary to the above provisions of the law. Thus, it was lodged out of the prescribed time, hence the entire appeal is time barred.

It is noteworthy to point out that, although in his submission the appellant insisted that his appeal was lodged within the prescribed time,

but our close scrutiny of paragraphs 3, 6 and 7 of his written submission lodged on 2<sup>nd</sup> March, 2016 indicates that he is aware that the notice was lodged out of time because in the said paragraphs, the appellant instead of submitting on the appeal, he narrated on the reasons for the delay to lodge the appeal out of time. To appreciate this point, we find it very convenient and appropriate to reproduce the said paragraphs herein below:-

*Paragraph 3 "Honourable Judge in this document I submit **three reasons for asking permission to bring the appeal Court of Appeals out of time** and they are **disease, poverty and unfair conduct** that I went through in the High Court Division of Labour in the process of appeals..."*

*Paragraph 6 "...I am deprived of the achieves of the proceedings of the CMA level, the documentation of the proceedings of the High Court were torn by the officer of the court and retained only two pages. This is after **a follow-up that took me a year.** All that time in step (sic) with the sessions of the High Court Division of Labour..."*

*Paragraph 7 "**That, the applicant intends to apply to the court at a date and time fixed by the Registrar that, this Honourable court be pleased to extend the time to the applicant to file an application for leave to appeal to the court of Appeal against the decision of the High Court***

*Labour Division entered on 26<sup>th</sup> August 2011...” [Emphasis added].*

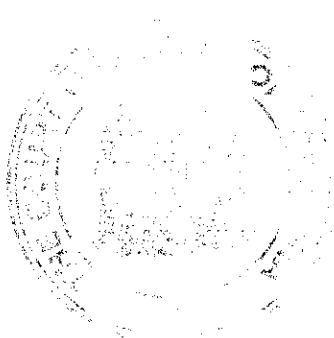
The above extracted and bolded paragraphs from the appellant written submission confirm what was submitted earlier on by Ms. Salah that, the appellant is aware that his appeal was lodged out of the prescribed time and that is why instead of submitting on the grounds of appeal he submitted on the reasons for the delay and prayed the Court to extend time for him to appeal out of time. The prayer which cannot be entertained by this Court, as what is before us is the appeal and not application for extension of time. In the event, it is our strong view that, instead of lodging the appeal, the appellant was required to first to lodge an application for extension of time and all the reasons he had since submitted before this Court could have been constituted grounds to support his application for extension of time and not otherwise. It follows therefore that, this Court cannot entertain the appeal which has been lodged out of time, while no extension of time has been sought and granted to the appellant. Given the circumstances obtaining in this appeal, we are settled that the appeal before us is incompetent for being lodged out of time.



Before penning of, we think it is important to emphasize that any notice of appeal lodged before the Court must comply with the period of limitation prescribed under Rule 83 (2) of the Rules.

In the upshot and taking into account that there is no competent appeal which is capable of being maintained by the Court, the appeal is hereby struck out. The appellant, if still interested to pursue this matter, is at liberty to first lodge an application for extension of time before the appropriate forum. We make no order as to costs. It is so ordered.

**DATED at DAR ES SALAAM** this 18<sup>th</sup> day of June, 2019.



S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

F. L. K. WAMBALI  
**JUSTICE OF APPEAL**

R. J. KEREFU  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.

  
B. A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**