**IN THE COURT OF APPEAL OF TANZANIA**

**AT MBEYA**

**(CORAM: KIMARO, J.A., MUGASHA, J.A., And MZIRAY, J.A.)**

**CIVIL APPEAL NO. 153 OF 2015**

**AGREY SAPALI ..... APPELLANT**

**VERSUS**

**MKUU WA CHUO MUST ..... RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania Labour Division at Mbeya)**

**(Aboud, J.)**

**dated the 22nd day of October, 2015**
**in**
**Revision No. 22 of 2015**

**.....**

## RULING OF THE COURT

6th & 12th April, 2016

**MZIRAY, J. A.:**

The appellant, Agrey Sapali who was an employee of the respondent University as an accountant was charged in the Resident Magistrate's Court at Mbeya in Criminal Case No. 77 of 2011 with two offences of forgery and theft of the respondent's fund whereby he was acquitted. Subsequently, disciplinary proceedings were initiated by his employer against him which ended up terminating his employment sometimes in the year 2012. Dissatisfied with the termination, he channeled his complaints to the Commission for Mediation and Arbitration herein after referred to as CMA at

Mbeya vide Case No. CMA/MBY/41/2013 in which upon hearing the parties, the CMA on 3/4/2014 issued the Arbitral award in favour of the respondent. The appellant was served with a copy of the award on 4/4/2014. Aggrieved, he unsuccessfully filed Revision No. 22/2015 in the High Court of Tanzania Labour Division. Still dissatisfied, he filed this appeal.

When the appeal came up for hearing, Mr. Francis Rodgers, learned State Attorney, assisted by Mr. Omari Issa, learned advocate sought to abandon the preliminary objection they had earlier on filed under Rule 107 of the Court of Appeal Rules, 2009 (the Rules) and argue the irregularities occasioned by the High Court in entertaining the appeal. When allowed, Francis Rodgers, learned State Attorney argued that in terms of section 91(1)(a) of the Employment and Labour Relation Act No. 6 of 2004 the contemplated Revision to the High Court Labour Division was to be filed within six weeks of the date the award was served but according to the record available, the award of CMA was delivered on 3/4/2014 and served to the appellant on 4/4/2014. The revision was filed in the High Court on 11/5/2015 which is outside the time prescribed by the law.

On that basis therefore, the learned Stated Attorney urged the Court to invoke Rule 4 of the Rules to nullify the proceedings and the decision of

the High Court. Apparently the above rule is improper as we will later on show in our decision.

On his part, the appellant who appeared in person, unrepresented, conceded to the fact that the award was issued on 3/4/2014 and he was served the same on 4/4/2014. He however stated that he filed his revision to the High Court on 18/4/2014 well within the prescribed time and that the revision was heard on 29/4/2014 by Nyerere, J. and the decision to that effect was given. He added that it is quite unfortunate that the proceedings and the decision thereof were not included in the record of appeal. As part of the records were missing, the appellant in the circumstance, admitted that the record of appeal as such is incomplete as he was not able to get the record of CMA. He urged the Court to allow him to withdraw the same and prepare a complete record of appeal.

In reply the learned State Attorney submitted that as the record is incomplete, the appeal is not properly before the Court and it should be struck out.

On our part, we think the matter will not detain us. Section 91(1) of the Employment and Labour Relation Act, No. 6 of 2004 provides:

*section 88(8) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the Arbitration award;*

*a) Within six weeks of the date that award was served on the applicant unless the alleged defect involves improper procurement:*

*b) If the alleged defect involves improper procurement, within six weeks of the date that the applicant discover that fact."*

It is true according to the cited provision herein above that the application to the Labour Court for a decision to set aside the arbitration award is to be made within six weeks.

Since the arbitration award was delivered on 3/4/2014 and served to the appellant on 4/4/2014, then, by simple computations, all things being equal, the Revision ought to have been instituted by 6/6/2014. As the record reflect, this was not the case. The same was instituted on 11/5/2015 which by far is out of the prescribed time by the law.

This reason would have been sufficient to dismiss this appeal but as the appellant has raised a pertinent issue that the record of appeal is

incomplete, we find it necessary to direct our minds on this issue, which we think is serious before we move to any next step of the appeal.

In terms of Rule 96(2)(c) of the Rules, the record of proceedings of the CMA are among the primary documents which ought to have accompanied the appeal. Both parties concede that these documents are missing in the record. On our view without the inclusion of the proceedings of CMA, the instant record before us is incomplete. If the record is incomplete obviously the appeal is incompetent before the Court. As such, the appeal is struck out under Rule 4(2)(a) of the Rules. This being an employment cause, we make no order to costs.

DATED at MBEYA this 11th day of April, 2016.

N.P. KIMARO
**JUSTICE OF APPEAL**

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

R.E. MZIRAY
**JUSTICE OF APPEAL**

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


E.Y. MKWIZU
**DEPUTY REGISTRAR**
**COURT OF APPEAL**