

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 180 OF 2008

MOHAMED MRISHO.....APPLICANT

VERSUS

NAS HAULIERS LTD.....RESPONDENT

**(Application for extension of time to file application for leave from the
decision of the High Court of Tanzania at Dar es Salaam)**

(Mruma, J.)

dated the 29th day of September, 2008

in

Civil Appeal No. 125 of 2003

RULING

23 February & 11 March, 2009

MUNUO, J.A.:

The applicant, Mohamed Mrisho, is seeking extension of time to apply for leave to appeal to this Court after an application for leave to appeal was dismissed by the High Court in Civil Appeal No. 125 of 2003. Mruma, J. dismissed the application for leave to appeal on the 29th September, 2008 on the ground that the trial court lacked jurisdiction to determine the matter so it would be futile to appeal to this Court in any event.

In this application for extension of time to apply for leave to appeal to this Court against the decision of Mandia, J. in Civil Appeal No. 125 of 2003, the applicant appeared in person. The respondent was represented by Mr. Buberwa, learned advocate.

This matter has a chequered history.

Way back in 1999, the applicant filed a labour complaint at the Temeke Labour office, claiming sh. 6,160,000/= from his employer, the respondent NAS Hauliers Ltd. The claim was for out of station allowances for the period he was transferred from Dar es Salaam to Mombasa. The respondent declined to pay the claim so the applicant unsuccessfully sought the intervention of the Labour Commissioner under the provisions of section 132 of the Employment Ordinance, Cap. 366. The Labour Commissioner referred the matter to the Court of Resident Magistrate Kisutu, Dar es Salaam. There too, the claim suffered dismissal for lack of proof. The applicant thereafter appealed to the High Court vide Civil Appeal No. 125 of 2003.

Mandia, J. held at Page 3 of the typed judgment.

.....The proceedings of Employment Cause No. 6 of 1999 were, however, not filed in a District Court as required by law but were filed in a Court of Resident Magistrate where a District Magistrate cannot exercise the powers under section 133 of the Employment Ordinance. The proceedings of the trial court were therefore reported by the wrong person, and were conducted by the wrong court.

Upon the learned judge dismissing the appeal, the applicant sought leave to appeal to this Court. Mruma, J. dismissed the same on the ground that the trial court lacked jurisdiction to try the cause so even if leave to appeal were granted, there would have been no chance of the appeal succeeding. Mruma, J. passed the decision on the 29th September, 2008. Later, on the 10th October, 2008, the applicant went to the Legal Aid Committee of the University of Dar es Salaam to seek legal assistance. The Legal Aid Committee wrote to the Commissioner for Labour on the 10th October, 2008 reinforcing the decision of Mruma, J. and advising the Labour Commissioner to take the employment complaint of the applicant to the court of competent

jurisdiction. The letter of the Legal Aid Committee to the Labour Commissioner is annexed to the Notice of Motion.

It appears the Labour Commissioner took no further action. Some two months later, i.e. on the 10th December, 2008, the applicant filed the present Notice of Motion seeking extension of time to file a reference against the decision of Mruma, J. It appears the Notice of Motion was drawn by the Legal and Human Rights Centre, Buguruni Legal Aid Clinic, Dar es Salaam.

In his affidavit in support of this application, the applicant stated at paragraph 5 that after the Legal Aid Clinic at the University of Dar es Salaam failed to help him so he went to the Ministry of Justice and Constitutional Affairs which referred him to the Buguruni Human Rights Centre Legal Aid Clinic which drew the Notice of Motion for him. Hence this application for extension of time.

Mr. Buberwa, learned advocate for the respondent opposed the application for extension of time on the ground that the applicant

failed to explain why he delayed the application for over sixty days. Adopting the affidavit in reply deponed to by the principal officer of the respondent, one Alkarim Kassim, counsel for the respondent reiterated that as the applicant made no attempt to explain why he inordinately delayed the intended reference against the decision of Mruma, J., there is simply no sufficient ground for extending the period of applying for leave to appeal so the Court should dismiss this application with costs.

The issue is whether there is sufficient cause for granting extension of time.

Both learned judges, Mandia, J. as he then was, and Mruma, J. correctly held that the trial court lacked jurisdiction to determine the matter in that the employment cause ought to have been instituted in the District Court. Furthermore, the University of Dar es Salaam Legal Aid Committee rightly referred the applicant to the Labour Commissioner who would then take essential steps to refer the matter to the District Court for adjudication and determination.

There is nothing on record to show whether the applicant took the material letter to the Labour Commissioner. Had he done so the matter would have been filed in a court of competent jurisdiction for determination. Instead of taking the correct venue, the applicant sought extension of time to file a reference against the decision of Mruma, J.

Under the circumstances, the applicant has made no attempt to justify extension of time. Like the two learned judges, I find that since the trial court lacked jurisdiction to determine the matter, a further appeal would not rectify the situation. Filing the employment cause in a court of competent jurisdiction would have enabled the matter to be determined on merit.

As it is, the applicant has not established sufficient ground for extending the period of applying for leave to appeal to this Court. He has also not explained why he delayed to apply for reference if he wanted to, within the statutory 14 days. Instead, the applicant sat on the fence for over sixty days and ignored the advice of the Legal

Aid Committee of the University of Dar es Salaam which would have enabled the matter to be determined by a court of competent jurisdiction.

For the reasons stated above, I find no justification for granting extension of time to apply for leave to appeal. As this is an employment cause, I make no order for costs.

DATED at DAR ES SALAAM this 11th day of March, 2009.

E. N. MUNUO
JUSTICE OF APPEAL

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

(P. B. KHADAY)
DEPUTY REGISTRAR