IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

CIVIL APPEAL NO. 117 OF 2014

(CORAM: RUTAKANGWA, J.A., MJASIRI, J.A., And KAIJAGE, J.A.)

LEONARD MAGESA ..... APPELLANT

VERSUS

M/S OLAM (T) LTD ..... RESPONDENT

(Appeal from the Ruling and Order of the High Court of Tanzania at Mwanza)

(De-Mello, J.)

dated the 20th day of February, 2014

in

HC. Misc. Civil Application No. 15 of 2008

JUDGMENT OF THE COURT

8th & 11th December, 2015

MJASIRI, J.A.:

This is an appeal against the ruling of the High Court (De-Mello, J.) in Miscellaneous Civil Application No. 15 of 2008 whereby the respondent's application for orders of *certiorari* against the decision of the Minister for Labour and Youth Development, was granted on February 20, 2014.

When the appeal was called on for hearing, only the appellant, who appeared in person and was unrepresented, was present in Court. Mr. Pauline Rugaimukamu, learned advocate for the respondent was absent

even though he was duly served with the notice of hearing on November 3, 2015. Consequently the Court decided to proceed with the appeal in the absence of the respondent under Rule 112 (2) of the Tanzania Court of Appeal Rules, 2009 (the Court Rules).

Before going into the merits of the appeal, we wanted to satisfy ourselves whether or not the High Court was properly moved when granting the orders of *certiorari*.

On a careful perusal of the record, we have noted that the respondent's application in the High Court was made under Section 18 (3) of the Law Reform Fatal Accident and Miscellaneous Provision, Cap. 260 as amended by Act No. 55 of 1968 and Act No. 21 of 1991. The relevant law under which an application for **certiorari** can be made is section 17 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions), Cap. 310 R.E. 2002. It provides as under:-

> *"17(2) In any case where the High Court would but for subsection (1) have had jurisdiction to order the issue of a writ of mandamus requiring any act to be done or a writ of prohibition or certiorari removing any proceedings or matter in the High Court for any purpose, the court may make an order requiring the*

act to be done or prohibiting or removing the proceeding or matter, as the case may be."

This means that the respondent in the High Court by making reference to the wrong provisions of the law did not properly move the High Court. The order was granted erroneously under the wrong provisions of the law.

It is now settled law that failure to properly move the court renders the application incompetent. On a number of occasions this Court has stated that a court can only be moved to hear and determine an application if a proper provision of the law is cited. The gravity of this error is succinctly stated in the case of **China Henan International Cooperation Group v. Salvand Rwegasira,** Civil Application No. 22 of 2005 CAT (unreported). This Court stated thus:-

". . . Here the omission in citing the proper provision of the rule relating to a reference and worse still the error in citing a wrong and inapplicable rule in support of the application is not in our view, a technicality falling within the scope and purview of Article 107 (2) (e) of the Constitution. It is a matter which goes to the very

root of the matter. We reject the contention that the error was technical."

In **Chama cha Walimu Tanzania v. Attorney General,** Civil Application No. 151 of 2008 CAT (unreported) it was stated that the High Court (Labour Division) was duty bound to strike out the application for want of citation of the applicable provision of the law. See **National Bank of Commerce v. Sadrudin Meghji,** Civil Application No. 20 of 1997 CAT (unreported).

In **Harish Jina v. Suleiman,** Civil Application No. 2 of 2003, CAT (unreported) cited in **Chama cha Walimu** case (supra) the Court categorically stated that citing a wholly inapplicable provision of the law, was a worse situation than citing a correct section but a wrong subsection. In this case a wholly inapplicable provision of the law was cited.

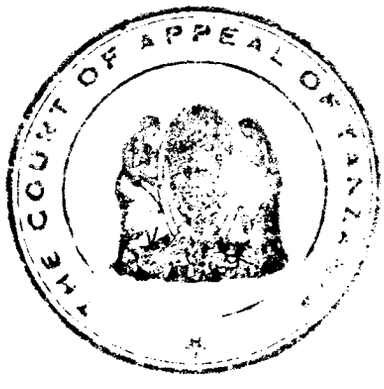
In view of the prevailing situation, what then is the fate of the application in the High Court and this appeal before the court? In view of the unbroken chain of authorities, wrong citation of the law, section, subsections and/or paragraphs of the law or non citation of the law will not move the court to do what it is asked to do and renders the application

incompetent. See for instance **Edward Bachwa & 3 Others v. Attorney General,** Civil Application No. 128 of 2006, CAT (unreported).

Given the circumstances, the proceedings in the High Court are a nullity. By the powers vested in us under section 4 (2) of the Appellate Jurisdiction Act, 1979 we hereby quash the proceedings and ruling of the High Court and set aside the order of *certiorari* issued. We also hereby strike out the appeal for being incompetent.

Order accordingly.

DATED at MWANZA this 11th day of December, 2015.



E. M. K. RUTAKAGWA
JUSTICE OF APPEAL

S. MJASIRI
JUSTIC OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

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

E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL