

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO. 135 OF 2019

(Arising from the Judgment of the High Court of Tanzania at Mwanza (Hon. A. Z. Mgeyekwa Judge) dated 27th August, 2019 in Labour Revision Application No. 39 of 2019)

FRANCIS MBANI APPLICANT

VERSUS

PEACE LAND PRIMARY SCHOOL RESPONDENT

REASONS FOR THE DECISION

24 & 27/02/2020

RUMANYIKA, J.:

When the application for leave, with respect to this court's decision dated 27/08/2019 Francis Mbani (the applicant) to appeal to the Court of Appeal of Tanzania was called on 24/02/2020 for hearing, but on merits the applicant having argued his application, Mr. S. Mazula learned counsel for Peace Land Primary School (the respondent) raised a very crucial point and submitted that not only the applicant had raised no contentious point worth determination by the highest fountain of justice, but also the application for leave was both out of place and uncalled for. That with the provisions of Section 57 of the Labor Court Act No. 7 of 2004 (the Act) there was no such legal requirement. That the applicant should have only appealed as of right. The learned counsel cited the case of **Tanzania**

Teachers Union V. The Chief Secretary and 3 Others, Civil Appeal No. 96 of 2012 (CA) – unreported. That the application be struck out.

The applicant, reluctantly though conceded to the learned counsel's submissions and prayer. That is it.


I sustained the objection and struck out the application but I reserved reasons for the decision. Here are the reasons;

The free of any ambiguity provisions of Section 57 of the Act state that any party aggrieved by decision of the High Court (with respect to award of the CMA) exercising its revision powers may, on a point of law appeal to the Court of Appeal. The provisions of the law however do not set forth any procedure it being under Section 5 (2) (c) of the Appellate Jurisdiction Act Cap 141 R.E. 2002 or something. Unlike in the past, the position has been that there was no requirement of a certificate on point of law (see the case of **Tanzania Teachers' Union** (supra). I quote;

".....Having found that plain meaning of the language of section 57 of the LIA envisage no requirement for leave to appeal, henceforth, **the debate whether the right of appeal to the Court of Appeal under Section 5 (1) (c) of the AJA should no longer take this, or any court's time** It therefore follows that the decisions of the court in **Zayumba Abedi Hussein A. Akida & Others V. Tanzania Ports Authority** (supra) For the avoidance of doubts **the right of appeal from Labour Court under Section 57 of the LIA shall no longer be conditional or**

predicated in obtaining leave to appeal or certification of point of law by the High Court".

It is for the herein above demonstrated and stated reasons that I struck out the application. Indeed the applicant should have appealed as of right.



S. M. RUMANYIKA
JUDGE
25/02/2020

Delivered under my hand and seal of the court in chambers. This
27/02/2020 in the absence of both parties.



F.H.MAHIMBALI
DEPUTY REGISTRAR
27/02/2020