

TANZANIA / JUDGMENT

james kapyata vs mcc limited

2022 tzhcld 770 14 july 2022

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14 July 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LABOUR DIVISION AT PAR ES
SALAAM MISC. APPLICATION NO. 497 OF 2021 BETWEEN JAMES
KAPYATA APPLICANT VERSUS MCC
LIMITED RESPONDENT

RULING

S.M, MAG HIM BI, J, The application beforehand was lodged under the provisions of Section 94(1) (f) of the Employment and Labour Relations Act, Cap. 366 R.E. 2019 ("the Act) and Rule 24(1), (2) (a),(b),(c),(d),(e),(f), (3)(a),(b),(c),(d), 45 (1)(2) of the Labour Court Rules, G.N. No. 106 of 2007("the Rules"). The applicant is moving the court for the following

orders:

1. That this Hon. Court be pleased, to extend the decree passed on 18/10/2021 by this Hon. Court in consolidated labour dispute No. 6 of 2019 between Benson Kasalile Vs. MCC Ltd and No. 12 of 2020 between Charles Nyaluke and 8 others VS. MCC Ltd and No. 12 of 2020 between Charles Nyaluke and 8 others Vs. MCC Ltd to also cover the applicant. i
2. Any other reliefs this Honourable Court may deem fit and just to grant. The application was lodged by way of Chamber Summons supported by an affidavit of the applicant dated 11th day of December, 2021. The respondent opposed the application by a counter affidavit of one Geoffrey Lucas Marine, a Principal Officer of the respondent, deponed on the 23rd day of February, 2022. The application was disposed by way of written

submissions.

Brief background of the application is that the applicant was an employee of the respondent, an employment which automatically terminated on the 03/6/2016, upon the applicant reaching the compulsory retirement age of 60 years (annexure "A" to the affidavit). Sometimes in 28/07/2014, there was signed a Collective Bargaining Agreement ("the CBA") between the respondent and Communication and Transport Workers Union (COTWU) to which the applicant was a member. In clause 2.0 of the CBA , the parties agreed on payment of "Golden Handshake" allowance upon

retirement. It is the formula of calculation of this amount that has provoked a series of litigation including the current application. Apart from the applicant herein, his co-employees had lodged disputes on the calculation formula. The disputes were registered in this court as Labour 2 Dispute No. 6 of 2019 between Benson Kasalile Vs MCC Ltd and Labour Dispute No. 12 of 2020 between Charles Nyaluke and 8 others Vs. MCC Ltd, the two disputes were consolidated. On 18/10/2021, this Court delivered the judgment on the consolidated disputes and determined the controversial issue on the calculation of payment of the Golden handshake allowance under clause 20.2.0 of the CBA. The applicant was not a party to the consolidated dispute hence in the current application, the applicant is moving the court under Rule 45(1) of the Rules, to extend the decree passed on the consolidated dispute on the ground that his situation is emanating from the same CBA and that the controversy remains the same. While making his reply submissions, Mr. Frederick Mbise, learned Counsel representing the respondent brought to the attention of this court crucial issues which have caught my attention and need to be determined before I go into the merits or otherwise of this application. He submitted two issues, one is that the application is filed out of the sixty days provided for under Rule 45(1) of the Rules, and the other one is that after this court issued the judgment cited above, on 25/10/2021, the respondent lodged in this court a notice of appeal to the Court of Appeal of Tanzania. He then argued that once the notice of appeal has been duly lodged, the High 3 Court ceased to have jurisdiction over the matter. He supported his submissions by citing the case of Arcado Ntagazwa Vs. Buyogera Bunyam bo, 1997 TLR 242 whereby the same position was held. He then argued that the applicant wish to extend a decree which has already been appealed against, it will render the proceedings a nullity because this court has no jurisdiction. He supported his argument by citing the case of Exaud Gabriel Mmari Vs. Yona Seti Akyoo & 9 others, Civil Appeal No. 91/2019 (CAT unreported) wherein the court nullified all proceedings of the Court which proceeded after the notice of appeal was filed. He therefore prayed that the application be dismissed with costs. Unfortunately, Mr. Nzowa, learned advocate representing the applicant did not make any rejoinder submissions to address the issues. On that note, I need not be detained much by this application. As correctly submitted by Mr. Mbise, the decree which is a subject of this application has a notice of appeal filed against it. It is trite law that once the notice of appeal to appeal to the Court of Appeal is filed, the High Court is no longer seized with jurisdiction to entertain the matter, neither is it seized with the records of the case; save for execution proceedings. 4 From the above, since the records are undisputed that a notice of appeal was lodged on the 25/10/2021, then I have no jurisdiction to do anything on the judgment and decree of this court, not even to extend it under Rule 45(1) of the Rules as moved by the applicant. That being the case, the application is incompetent. Having said that, I see it was Mr. Mbise's prayer that I dismiss the matter for want of jurisdiction, however, with respect, dismissal of the application is not the proper remedy under the circumstances. This is because once I dismiss the matter, the applicant will be barred to bring a similar application after the determination of the appeal at the Court of Appeal or in a case the notice of appeal is withdrawn or struck out. Therefore the proper remedy is to struck out this application so that the applicant can still have an opportunity to bring the same application after determination of the appeal, should he still wish to do so, but subject to time limitations. Having said that, I hereby proceed to strike out this application. at Dar es \$a'aam this 14th July, 2022. S.M>MAGHIMBI

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