

TANZANIA / JUDGMENT

CIVIL APPLICATION NO 348 18 OF 2022 PAUL CHANDO VS ICEALION GENERAL INSURANCE

COURT
TANZLIIDECIDED
1 January 2022

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM fCORAM: KOROSSO. J.A., KITUSI, J.A, And KHAMIS. J.A.1 CIVIL APPLICATION NO. 348/18 OF 2022 PAUL CHANDOAPPLICANT VERSUS ICEALION GENERAL INSURANCE..... RESPONDENT (Application for Revision of the decision of the High Court of Tanzania (Labour Division) at Dar es Salaam) (Mqanqa. J.) dated 21st day of April, 2022 in Misc. Application No. 502 of 2021 RULING OF THE COURT 16th February & 28th August, 2024 KOROSSO. 3.A.: This is an application to revise the decision of the High Court of Tanzania (Labour Division) in Misc. Application No. 502 of 2021 (Mganga, J.) which was dismissed for want of merits. It is by way of notice of motion and made under section 4(3) and (6) of the Appellate Jurisdiction Act, Cap 141 (the AJA) and rule 65(1), (2), (3) and (4) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The notice of motion is supported by an affidavit deponed by the applicant and premised on the following three grounds which paraphrased, state:

- (i) The High Court Judge erred in law for failure to exercise jurisdiction vested in him under rule 27 of the Labour Court Rules, GN No. 106 of 2007 to dismiss the application for Review.
- (ii) The High Court Judge committed material irregularity by invoking Order XLII Rule 1(l)(a), (b) and (2) of the Civil Procedure Act, Cap 33 (the CPC) and corresponding judgments in total disregard of the specific law (Labour Court Rules, GN No. 106 of 2007) applicable to Labour Matters.
- (iii) The High Court Judge erred in law and arrived at an irregular decision for failure to recognize that the denied reliefs were contrary to section 40 (2) of the Employment and Labour Relations Act, Cap 366 (ELRA); and ought to have been added to an order for compensation issued at his discretion is an error apparent on the face of the record and amenable for Review. On the competing side, the respondent resisted the application by filing an affidavit in reply deponed by Kocky Makondoo, the Principal Officer of the respondent company. Briefly, the background giving rise to the application before us is that, on 31/12/2004, the applicant was employed by the respondent as a Filing Clerk. On 21/9/2018, the respondent terminated the applicant's employment on allegations that he was involved in promoting a company named Pawl Insurance, which conflicted with the interest of the respondent. Dissatisfied with his termination, on 19/10/2018 the applicant referred the

matter to the Commission for Mediation and Arbitration (CMA) alleging unlawful termination, and claimed reinstatement and payment of Tshs. 150,000,000/= being twelve months' salary and other benefits. At the CMA, the applicant contended that the respondent failed to prove the alleged conflict of interest and did not follow the requisite procedures for the termination. He contended further that, essentially the termination process was tainted with bias including being denied the chance to give his mitigation and derogation of the principles of natural justice, particularly, the right to be heard. The CMA, through the arbitrator (H. H. Msina) decided in favour of the respondent and held that there were valid and fair reasons and also that the procedure for termination was followed. The applicant was awarded a one-month salary in lieu of notice. Aggrieved by the CMA's decision and award, on 8/6/2020 the applicant filed Revision Application No. 208 of 2020 in the High Court of Tanzania (Labour Division). The High Court revised the CMA decision and awarded the applicant the sum of Tshs. 8,281,130/=, equivalent to thirteen months' salary (twelve months and an additional one month in lieu of notice). Still dissatisfied, on 16/11/2021 the applicant lodged in the same court, an application for review, Misc. Application No. 502 of 2021 (Mganga, J.). The two grounds of the review application found on page 143 of the record of the instant application were as follows: "2. The honourable court erred in law for failure to order payment of the applicants wages due, leave, and other benefits from the date of unfair termination to the date of final payment; in addition to twelve months, compensation granted by this court thereby occasioning an error apparent on the face of the record.

2. The honourable court erred in law for failure to order reinstatement of the applicant and payment of wages due, leave, and other benefits from the date of unfair termination to the date of final payment as the termination was adjudged unfair both substantively and procedurally." Upon hearing the parties, the application was dismissed substantially, for reasons that the two grounds founding the application were more or less framed as grounds for appeal and not grounds for review, and thus meritless. Undaunted, the applicant has knocked on the doors of this Court seeking the revision of the decision of the High Court (Labour Division) in review (the impugned decision). On the day the application was called for hearing/ Paulo Chando, the applicant, appeared in person, unrepresented. The respondent did not enter appearance despite the record revealing that he was duly served with the notice of hearing on 29/1/2024 through his advocate, one Peter Paulo Ngowi, Consequently, we granted the prayer by the applicant and proceeded with the hearing of the application in the absence of the respondent in terms of rule 63(2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). When impelled to amplify his application, the applicant adopted his written submissions filed on 11/9/2022 together with contents of the notice of motion and the supporting affidavit. He urged us to consider the same in the determination of the matter. He had nothing further to submit. In his written submissions, the applicant contends that the issues arising from his application are; one, whether an application for review before the High Court Labour Division is an alternative to an appeal to the Court. Two, whether the denied or incomplete reliefs in the given awards violated section 40(2) of

the ELRA. He urged us to assess whether the provided reliefs were in addition to any other amount to which the employee is entitled in terms of any law or agreement and if not, if it can be taken to be an apparent error on the face of record and amenable for review. Three, is whether an order for compensation made by the High Court ought to be in addition to, and not a substitute for, any other amount to which the employee is entitled in terms of any law or agreement as per section 40(2) of ELRA. On the first issue of contention, the applicant argued that the High Court Labour Division is vested with jurisdiction to determine the applicant's review as an alternative to appeal. According to him, rule 27 of the Labour Court Rules, GN No. 106 of 2007 (Labour Court Rules) allows the review of its decision. He contended that rule 27 (2) of the Labour Court Rules, affords the applicant an option to apply for review even when an appeal is allowed but where no appeal has been preferred. It was thus his assertion that it was wrong for the High Court to compel the applicant to appeal instead of the review which he preferred believing would better address the reliefs he sought. In respect of the second issue of contention, the applicant submitted that it is an established legal principle "*lex specialis derogate legigeneral*,T that, where there is a specific law governing a particular matter, the said law has to be applied and not otherwise. As far as the applicant is concerned, in applying Order XLII Rule 1 (1) (a) (b) and (2) of the Civil Procedure Code, Cap 33 (the CPC) in place of rule 27 of the Labour Court Rules, the High Court committed a material irregularity considering rule 55(1) of the Labour Court Rules, he argued. Expounding on the third issue, the applicant challenged the reliefs granted by the High Court arguing that they were incomplete in terms of section 40(2) of ELRA. He maintained that when the provision is properly interpreted, the award for compensation of twelve months' salary ought to have been in addition to and not a substitute for any other amount to which the employee is entitled, in terms of any law or agreement. He implored us to find the High Court Judge's interpretation of the provision to be flawed, and that if not revised, it would bring absurdity and may be taken as a licence for employers to unfairly terminate employees indiscriminately, at their convenience. The applicant asserted further that a purposive interpretation of section 40(2) of ELRA is that, it is intended to compensate the employee for all his salaries and other entitlements that were due during his unfair termination and not be paid only 12 months' salary. He urged us to find the presence of an apparent error in the face of the impugned decision which should lead us to find it irregular and thus proceed to correct it. As stated earlier, the respondent neither entered appearance nor filed written submissions. However, the affidavit in reply filed on 7 19/7/2022 sworn by one Kocky Makondoo, essentially disputed the assertions in the affidavit supporting the notice of motion contending that they were misconceived and founded on wrong advice. The deponent restated the clarity and precision of the impugned judgment in compliance with section 40(1)(c) of the ELRA. Having carefully scrutinized the notice of motion and its supporting affidavit together with the applicant's submissions and the affidavit in reply from the respondent, this being an application for revision, we are called upon to remind ourselves of the well-settled legal position that revisional powers of the Court are exercised only under exceptional circumstances. This Court has on several occasions discussed the provisions stipulating the revisional powers of the Court and in the case of *Halais Pro*

Chemie v. Wella A. G [1996] T.L.R. 269 expounded on its revisional powers under section 4 (3) of the AJA, stating that: - "f. The Court may, on its own motion and at any time, invoke its revisional jurisdiction in respect of proceedings in the High Court; ii. Except under exceptional circumstances, a party to proceedings in the High Court cannot invoke the revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court; iii. A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court in matters which are not appealable with or without leave; iv. A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court where the appellate process has been blocked by judicial process, " Furthermore, in Olmeshuki Kisambu v. Christopher Naingola

[2002] T.L.R 280, the Court observed that: "The subsection has been considered by this Court on a number of occasions and various principles have been formulated to guide the exercise of discretion under the provision. For instance, in Ha/a/s P ro-C h em ie In d u strie s L td

v. Weila A.G . the Court reverted to and consolidated its earlier pronouncement in Mwakibete v. Editor of Uhuru, Transport Equipment v. D .P. Valambhia, and said that the revisional powers conferred by subsection (3) were not meant to be used as an alternative to the court's appellate jurisdiction. Hence, the court will not proceed suo motu in cases where the applicant has the right of appeal, with or without leave, and has not exercised that right. However, the court will proceed under the subsection where there.... 9 exists good and sufficient reason to justify recourse to the subsection. " See also, Transport Equipment Ltd. v. Devram P. Valambhia

[1995] T.L.R. 161, Moses Mwakibete v. The Editor- Uhuru and 2 Others [1995] T.L.R. 134 and Millicom (Tanzania) N.V. v. James Alan Russell Bell and 5 Others, Civil Revision No. 3 of 2017 (unreported). Our reading of the various decisions of the Court cited above is that the essence of subsection (3) of section 4 of AJA has been underscored. The fact that the Court's revisional powers are not meant to be used as an alternative to its appellate jurisdiction. Therefore, the Court will refrain from invoking revisional powers where the appellant's right to appeal is open and has not been so exercised unless there is a good and sufficient reason or exceptional circumstances to justify invoking such powers. In the instant application, the applicant has implored us to find that, he has showcased circumstances that warrant the invocation of the court's revisional powers and has fronted three grounds to support his prayers. We are now enjoined to determine whether the application has met the conditions for the Court to invoke its revisional powers against the impugned decision of the High Court. In doing so, we are enjoined to consider the import of the grounds supporting the application and its circumstances. The first ground calling for revision addresses the misapplication of rule 27 of the Labour Court Rules by the High Court Judge on review. The applicant faults the High Court in the impugned decision arguing that it failed to exercise its jurisdiction to review its own decision bestowed under rule 27 of the Labour Court Rules. We find it apt to reproduce the provision. Rule 27(2) states that: "Rule 27(2) - any person considering himself aggrieved by

a judgment, decree or order from which- (a)- an appeal is allowed, but from which no appeal has been preferred; or (b)- no appeal is allowed and who, from the discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the judgment or decree was passed or order made or, on account of some mistake or error apparent on the face of records, or for another sufficient reason, desires to obtain a review of the judgment, decree or order made against him. li

- (c) may apply for a review of the judgment decree or order of the Court." Certainly, rule 27 of the Labour Court Rules empowers the High Court to review its own decision and consequentially, allows an aggrieved party to file an application for review even where "an appeal is allowed\ but from which no appeal has been preferred." It is well established that the essence of a review is not to challenge the merits of the impugned decision but to address irregularities of a decision or proceedings which have occasioned injustice to a party. In *Chandrakant Joshubhai Patel v. Republic* [2004] T.L.R. 218, it was held that, a review is granted where a court considers it necessary to correct an apparent error or omission of a court and an error that does not require an elaborate argument to be established. It was further held that in a review, it is not sufficient to fault a Judge for taking a position that another could have decided differently where a court proceeds with an incorrect exposition of the law that leads to a flawed conclusion, (see, *Charles Barnabas v. Republic*, Criminal Application No. 13 of 2009 (unreported) and *National Bank of Kenya Limited v. Ndungu Njau*

[1997] eKLR 469). We have scrutinized the grounds for review before the High Court reproduced above, and we agree with the findings of the High Court Judge. It is our view that, the said grounds of review did not call upon the High Court to correct an apparent error or omission on the part of the court, rather, they expounded the applicant's dissatisfaction with the decision of the High Court in Revision Application No. 208 of 2020. Furthermore, the said grounds for review urged the High Court to take a different view of the matter under scrutiny. We have also discerned that the said grounds for review were not within the threshold of the High Court's powers of review set out in rule 27 of the Labour Court Rules and discussed in various decisions of the Court such as *Serengeti Breweries Ltd. v. Joseph Boniface*, Civil Appeal No. 150 of 2015 (unreported). Taking account of our findings above, we have also noted that in determining the review, what was addressed by the High Court judge was the weight to be accorded to the grounds supporting the review application and not the High Court's powers to determine the application before it. This can be discerned from the impugned ruling at pages 148 to 152 of the record of the revision. The High Court judge acknowledged the fact that the High Court was moved by the provision of rule 27(2) of the Labour Court Rules and pointed out the legal stance that: "There is a litany of cases by both this court and the Court of Appeal that in order an application for review to be granted, there must be an error on the face of the record..." We have also noted that on page 151 of the record of review, the High Court Judge proceeded to consider the two grounds founding the application before him and held that

the said grounds were not for review but framed as grounds of appeal. In the circumstances, we find no reason to fault the High Court Judge as we are of a similar view. Furthermore, even if we were to consider that section 27(2) of the Labour Courts Rules provides an option for a party to either appeal or apply for review, it is expected that where a review is opted out, there should be grounds advancing a review and not an appeal as it was in the instant case. Furthermore, regarding the invitation to invoke the Court's revisional jurisdiction on account of ground one of the instant application, we have found neither a good and sufficient reason nor exceptional circumstances to move us to find the need to correct the findings of the High Court Judge on review or justify any recourse for revision. We thus find the first ground of revision unmeritorious. Determination of ground two should not take up much time having regard to the deliberations above. We have gathered the issue emanating 14 therefrom to be, whether, in discussing Order XLII rule 1(1) (a), (b) and

- (2) of the CPC when determining an application for review, the High Court committed a material irregularity. On his part, the applicant argued that the High Court failed to consider the established legal principle that where there is a specific law governing a particular matter, it should be applied and not the general provision of law. He contended that applying Order XLII Rule 1(1)(a) (b) and (2) of the CPC instead of rule 27(2) of the Labour Court Rules which specifically addresses reviews in the High Court, was an irregularity on the part of the High Court which requires an intervention of this Court by way of invoking its revisional powers. The respondent's response in the affidavit in reply was to object to the assertion and to call for the applicant to provide strict proof of the assertions. In considering the submissions and affidavital averments, we have also taken into account the circumstances that led to the High Court judge's discussion of rule 1(1)(a), (b) and (2) of the CPC when deliberating on the matter. We agree that rule 27(2) of the Labour Court Rules provides for circumstances inviting a remedy for review for an aggrieved party in the High Court proceedings. In addition, we have noted that where there is a lacuna in the procedural law, provisions from other 15 laws with similar context may be considered as also stipulated in rule 55
- (1) of the Labour Court Rules. We are however clear in our mind that in the instant application, the High Court Judge did not apply the provisions of the CPC in lieu of section 27 of the Labour Court Rules. Upon perusal of the record of the application, we have gathered that the High Court Judge's discussion of rules 1(a) and (b) and (2) of Order XLII of the CPC was occasioned when comparing it with rule 27 of the Labour Court Rules vis a vis the conditions governing review applications. We have failed to find anywhere on record showing that the High Court Judge ousted the application of rule 27 of the Labour Court Rules in the determination of the application for review before him. Upon discussing the said provisions, he concluded that the applicant's grounds for review were actually grounds for appeal in disguise. Indeed, as observed earlier on, misconstruing a provision of the law or incorrect exposition of the law cannot by itself be a ground for review but can be a good ground for appeal (see, National Bank of Kenya Limited (*supra*)). For the foregoing, we have

failed to discern any material irregularity in the process to warrant our intervention as invited by the applicant. In the circumstances, we find ground two to be misconceived. 16 Taking account of our findings in grounds one and two above, we are of the view that, they are sufficient to dispose of this application and find no need to consider the remaining ground since it falls within the ambit of what has been deliberated and determined in those two grounds. In the end, we dismiss the application for lack of merit. We make no orders as to costs. DATED at DAR ES SALAAM this 27th day of August, 2024. W. B. KOROSSO JUSTICE OF APPEAL I. P. KITUSI JUSTICE OF APPEAL A. S. KHAMIS JUSTICE OF APPEAL The Ruling delivered this 28th day of August, 2024 in the presence of the Applicant in person and in absence of the respondent, is hereby certified as a true copy of the original. R. W. CHAUNGU DEPUTY REGISTRAR COURT OF APPEAL 17

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlil.org/media/judgment/315724/source_file/caa016f0697433e1/CIVIL_APPLICATION_NO_348_18_OF_2022_PAUL_CHANDO_VS_ICEALION_GENERAL_INSURANCE.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/paul-chando-v-icealion-general-insurance-ReviewvsAppeal-tanzlil-2022--6a3ea52b3b1caa9129824774>

Prepared on 14 October 2026 · Esheria