

TANZANIA / JUDGMENT

shirika la usafiri dar es salaam uda vs haji khalfan 2008 tzca 81 19 december 2008

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19 December 2008

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IN THE C O U R T O F A P P E A L O F T A N Z A N I A AT D A R E S S A L A A M C I V I L A P P L I C A T I O N NO. 112 OF 2008 S H I R I K A L A U S A F I R I D A R E S S A L A A M (U D A) A P P L I C A N T
VERSUS H A J I K H A L F A N R E S P O N D E N T (Application for an order to strike out notice of appeal from the decision of the High Court of Tanzania at Dar es Salaam) (Chande, J.) dated the 17th day of September, 2007 in Civil Revision No. 7 of 2007

RULING

5 & 19 December, 2008 M U N U O , J.A.: In the Notice of Motion, the applicant, Shirika la Usafiri Dar es Salaam (UDA), through the services of Mr. Jovin Lyimo, learned advocate, seeks to strike out the Notice of Appeal against the decision of Chande, J. as he then was, in Civil Revision No. 7 of 2007 in the High Court of Tanzania at Dar es Salaam . The respondent, Haji Khalfan, appeared in person and resisted the application. 2 It is the contention of counsel for the applicant th at the resp on den t has neither applied for, nor obtained leave to appeal so the intended appeal is incom petent as the appeal falls under section 5(1) (c) o f the Appellate Jurisdiction Act, 1979, Cap 141 R.E. 2002 so in law, th e intended appeal requires leave. Counsel for the applicant deponed to an affidavit stating that the p resent m atter com m enced as Em ploym ent Cause No. 48 o f 1993 in Kisutu Resident M agistrates' Court at Dar es Salaam. The resp on den t lost the em ploym ent cause application for costs. He then filed Civil Revision No. 7 of 2007 in the High C ourt to challenge the decision o f the trial court on costs. Per the Ruling of the High Court, the learned judge upheld the decision o f the trial costs because the bill o f costs w as tim e barred thence rendering the sam e incom petent. Chande, J. delivered the Ruling on the 17th Septem ber, 2007. D issatisfied with the decision of the High Court, the respondent lodged his Notice of Appeal on the 28th Septem ber, 2007 as eviden ced by annexure A p -IB to the Notice of Motion. 3 It is the contention of counsel for the applicant, th at since Civil Revision No. 7 o f 2007 was in effect the first appeal against the Ruling o f the Bill o f Costs in Em ploym ent C ause No. 48 of 1993, the intended appeal w ould be a second appeal so the respondent should have applied for leave to appeal within 14 days from the date of the \ High Court Ruling on the 17th Septem ber, 2007. T h e lack of the statutory leave to appeal renders the N otice of Appeal the respondent lodged incom petent, counsel for ap plicant m aintained. He thence urged the Court to strike out the Notice of Appeal in question under Rule 82 o f the Court of Appeal Rules, 1979 Cap 141 R.E. 2002 for failure

to take an essential step, which is, to obtain leave to appeal within fourteen days of the decision of the High Court. He cited the cases of Dr. Lubero Bakari Mvungi versus Al-Haji Anzuru ni J. Mangula Civil Application No. 33 of 2007, Court of Appeal of Tanzania (unreported) and Frasin MRA versus Mashaka Abas and 2 Others, Civil Application No. 26 of 2008, (unreported) wherein the Court struck out appeals for failure to take an essential step. In Dr. Lubero's case cited supra, a second appeal, leave to appeal had not been applied for. Hence the Court struck out the Notice of Appeal under Rule 82 of the Court Rules, Cap 141 R.E. 2002. Likewise, in the case of Frasin cited supra, the Court struck out the Notice of Appeal for lack of leave to appeal as stipulated under the provisions of Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002. The respondent was unrepresented. He filed a counter-affidavit arguing that the Notice of Appeal he lodged on the 28th September, 2007 was proper and should not be struck out. He said he did not obtain leave to appeal because the learned judge had been transferred to Arusha. The issue is whether the Notice of Appeal filed by the appellant should be struck out for failure to take an essential step, that is, to obtain leave to appeal. The matter is straight forward. The Notice of Appeal lodged by the respondent on the 28th September, 2007 is for a second appeal against the rejected bill of costs he lodged in Employment Cause No. 48 of 1993 in the Court of Resident Magistrate at Kisumu Dar es Salaam. The second appeal falls under Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 so leave to appeal to this Court is mandatory. The respondent should have applied for leave to appeal within 14 days of the decision of the High Court. This he failed to do. Under the circumstances, the application has merit. I accordingly strike out the Notice of Appeal under Rule 32 of the Court Rules, Cap 141 R.E. 2002 for lack of leave to appeal. The appellant is directed to file a new Notice of Appeal at the Court of Appeal within 14 days of the date of this judgment. Failure to do so will result in the appeal being struck out. DATED at DAR ES SALAAM this 19th day of December, 2008. E. N. MUNUO JUDGE OF APPEAL 'certify that this is a true copy of the original. f' 'P. [> . KfADAY) DEPUTY REGISTRAR

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