

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**(CORAM: MKUYE J.A., MWAMPASHI, J.A. And MURUKE, J.A.)**  
**CIVIL APPLICATION NO. 342/18 OF 2022**

**YOKTANI GERALD NYONDWI ..... APPLICANT**

**VERSUS**

**ARAB CONTRACTORS-ELSEWEDY ELECTRIC..... RESPONDENT**

**(Application for Revision of the Judgment of the High Court of Tanzania,  
Labour Division, at Dar es Salaam)  
(Maghimbi, J)**

**dated the 25<sup>th</sup> day of April, 2022**

**in**

**Labour Revision No. 238 of 2021**

**RULING OF THE COURT**

6<sup>th</sup> & 20<sup>th</sup> May, 2024

**MURUKE, J.A:**

The applicant, Yoktani Gerald Nyondwi, was employed by the respondent on 23<sup>rd</sup> September, 2020, as a Civil Supervisor for one year contract subject to three months' probation period which was to come to an end on 23/09/2021. On 6<sup>th</sup> January, 2021, he was terminated from the employment after being charged and found guilty of assaulting a fellow employee. Aggrieved by the termination, the applicant referred the matter to the Commission for Mediation and Arbitration for Mkuranga (the CMA), in which the dispute proceeded *ex-parte*, against the respondent. Despite the case being heard *ex-parte*, yet, the mediator dismissed the applicant's claims, for lack of merits. The CMA decision dissatisfied the applicant, thus filed Revision at the High Court Labour Division.

He again lost his case. He has thus preferred the instant application for Revision before the Court.

The application is supported by an affidavit sworn by the applicant himself, who also filed written submission. On the other side, the respondent contested the application through an affidavit in reply affirmed by Mr. Anwaar Katakweba, learned counsel, and submission in reply filed on 2<sup>nd</sup> September, 2022. The application before us is brought under section 4(3) of the Appellate Jurisdiction Act [Cap. 141 R.E 2029] and Rule 65(1) (2) (3) (4) and (5) of the Tanzania Court of Appeal Rules 2009. These powers are exercised where no right of appeal exists or where such rights has been blocked by a judicial process.

There is a plethora of authorities to the effect that, revisional powers of the Court can only be invoked where there is no right of appeal. Some of them are; **Transport Equipment Ltd v. Devram P Valambhia** [1995] T.L.R 161, **Moses J. Mwakibete v. The Editor-Uhuru, Shirika la Magazeti ya Chama & Another** [1995] T.L.R 134, **Halais Pro-Chemie v. Wella A.G.** [1996] T.L.R 269 and **Augustino Lyatonga Mrema vs Republic & Another** 1999 T.L.R. page 273. Others are **M/S National Bank Commerce Limited v. Salima Abdallah & Another**, Civil Application No. 83 of 2001, **Kezia Violet Mato v. National Bank of Commerce & 3 Others**, Civil Application No. 127 of 2005 (both unreported), **Balozi Abubakar Ibrahim and Another v. Ms. Benandys Limited and Two Others**, Civil Revision No. 6 of 2015, [2015] TZCA 5 (30

October, 2015, TANZLII), **Mansoor Daya Chemical Limited v. National Bank of Commerce Ltd**, Civil Application No. 464/16 of 2014, [2020] TZCA 183 (15 April, 2020, TANZLII) and **Felix Lendita v. Michael Long'idu**, Civil Application No. 312/17 of 2017, [2018], TZCA 299 (10 December, 2018, TANZLII)

In the **Augustino Lyatonga Mrema's** case (supra) the Court held among other things that:

*"To invoke the Court of Appeal's power of revisional there should be no right of appeal in the matter; the purpose of this condition is to prevent the power of revision being used as an alternative to appeal".*

According to the law therefore, where there is a right of appeal the power of revision of this Court cannot be invoked. Such powers are exercised in exceptional circumstances. The question that follows is; has the applicant shown any exceptional circumstances to warrant this Court to exercise its revisional powers.

At the commencement of the hearing of the application, the respondent's counsel, had raised an objection to the effect that, Revision has been preferred instead of the appeal. The Court, upon examination of the notice of the preliminary objection, and having engaged the respondent's counsel the preliminary objection was withdrawn by him. Then, the Court proceeded with consideration of one ground of revision as paraphrased hereunder:

*"The learned High Court Judge erred in her Judgment by making reference to rejoinder submission by the applicant that were filed by Mr. Musa Majaliwa the personal representative, while, he was no longer representing the applicant".*

At the hearing of the application, the applicant appeared in person, not represented, and opted to adopt his Notice of Motion, affidavit in support and submission he had filed earlier. The respondent who was represented by Mr. Frank Kifunda, learned counsel, also adopted affidavit in reply affirmed by Mr. Anwaar Katakweba and replying submissions, filed on 2<sup>nd</sup> September, 2022.

The issue for determination before us is whether, it was proper for High Court Judge to refer in her judgment, that the rejoinder submission was prepared by the applicant's former personal representative Mr. Musa, in determination of the Revision application, while Mr. Musa had ceased to represent the applicant. The applicant has submitted in length on his written submission on other matters not relevant for revision before us, but of importance is on page 9 of supplementary records of proceedings dated 29<sup>th</sup> November, 2021, which for clarity are reproduced hereunder:

*"Date: 29/11/2021*

*Coram: Hon. S. M. Maghimbi, J*

*Applicant: present in person*

*For respondent: Mr. David Kasanga, advocate*

*CC: Edith Kanju*

**Applicant:** *On 11<sup>th</sup> November, 2021 I dismissed my personal representative as he was forging my signature. I pray for leave to file rejoinder.*

**Mr. Kasanga:** *No objection.*

**Order:** *(1) The applicant granted leave to file rejoinder by 10/12/2021.*

**Sgd:**

**S. M. Maghimbi**

**JUDGE**

**29/11/2021"**

Following the order, the applicant filed rejoinder submission by the assistance of Mr. Noel Nchimbi advocate of TUICO Head Quarters Ilala Sharif Shamba, Box 5680, Dar es Salam. According to the proceedings above, the applicant was no longer represented by Mr. Musa Majaliwa as his personal legal representative as on 14 November, 2021. However, in the Judgment of the High Court at page 6, it is on record that, *"in rejoinder Mr. Musa reiterated his submission in chief"*. What was in record of the High Court file is the submission in chief filed by Musa Majaliwa, and then rejoinder submission filed by Mr. Noel Nchimbi, advocate on behalf of the applicant. Obviously it was wrong for the High Court to say that in *"rejoinder Mr. Musa reiterated his submission in chief"*, because there was no rejoinder filed by Mr. Musa Majaliwa, former applicant's legal personal representative.

Having satisfied ourselves that there was no rejoinder submission filed by Mr. Musa, the next point for our determination is whether the mere reference to Mr. Musa instead of Mr. Nchimbi, prejudiced the applicant's case. We have gone through the submission in rejoinder filed by Mr. Nchimbi and found that it is true, he reiterated submission in chief that was filed by Mr. Musa Majaliwa. Rejoinder submission, correctly answered the respondent's submission pointing at submission in chief. Had the rejoinder submission departed from submission in chief, we could have found merits on the applicant complaint, but that is not the case. Mere reference to Mr. Musa to have filed rejoinder submission, instead of the Mr. Nchimbi while the contents is the same, on our opinion, is a mere slip of the pen, that did not prejudice the content of rejoinder submission.

This Court was once confronted with an issue of slip of pen rule, in the case of **Jewels & Antiques v. National Shipping Agencies Co. Ltd** [1994] T.L.R 107. It was held that, "slip rule" under section 96 of the Civil Procedure Code is applied to correct clerical mistakes and accidental slip or omissions of officers of the Court in Judgments, decree or orders. See also in the case of **Inter Consult Ltd vs Mrs. Nora Kassanga & Another** (Civil Appeal 79 of 2015) [2019] TZCA 164 (4 February 2019), TANZLII.

On our part, we are of a considered opinion that the rationale behind the slip rule is predicated on the principal, correctly in our view, that a litigant should not be allowed to suffer through the mistake of an officer of the court connected

with the administration of justice and that courts have a duty to ensure that court records are true and that they represent an accurate record of the proceedings.

Correction of the names mentioned to have filed the applicant's rejoinder was an issue that was within the domain of the same High Court Judge to correct upon the applicant request after following the proper procedure which option is still available.

In totality for the above reason, we find the Revision application without merit and we dismiss it accordingly. This being labour matter, there is no order as to costs.

**DATED** at **DAR ES SALAAM** this 17<sup>th</sup> day of May, 2024.

R. K. MKUYE

**JUSTICE OF APPEAL**

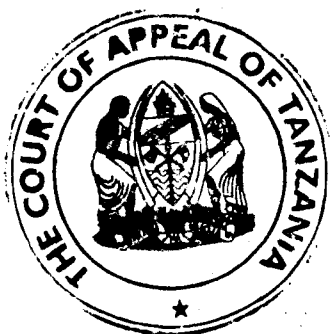
A. M. MWAMPASHI

**JUSTICE OF APPEAL**

Z. G. MURUKE

**JUSTICE OF APPEAL**

The ruling delivered this 20<sup>th</sup> day of May, 2024 in the presence of the Applicant in person and Mr. Jackson Mgonja, learned counsel for the respondent, is hereby certified as a true copy of the original.



*A. S. Chugulu*

A. S. CHUGULU

**DEPUTY REGISTRAR**  
**COURT OF APPEAL**