

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 56 OF 2011

(CORAM: MUNUO, J.A., NSEKELA, J.A., And BWANA, J.A.)

KHALID MWISONGOAPPELLANT

VERSUS

M/S UNITRANS (T) LTDRESPONDENT

**(An Appeal from the Ruling of High Court of Tanzania Labour Division
at Dar es Salaam)**

(Lyimo, J.)

Dated 4th day of March, 2011

in

Labour Dispute Revision No. 330 of 2009

RULING OF THE COURT

30 March & 20 April, 2012

MUNUO, J.A.:

The appellant instituted Civil Appeal No. 56 of 2011 to challenge the decision of the Labour Division of the High Court, in Labour Dispute Revision No. 330 of 2009. Before the appeal was heard the respondent, M/s Unitrans (T) Ltd. through the services of Law Care Chambers, filed a Notice of Preliminary objection to the effect that:-

"The appellant has failed to comply with the prescribed procedure under the Court of Appeal Rules, 2009 by not presenting the written submission within sixty days after lodging the record of appeal."

The respondent was represented by Ms. Victoria Mandari, learned advocate. The appellant was unrepresented and he appeared in person.

Learned counsel for the respondent contended that the appellant had a mandatory obligation to file a written submission in support of his appeal within sixty days under the provisions of Rule 106 (1) of the Court Rules, 2009. Upon the appellant's default to file a written submission, counsel for the respondent further contended, the Court should dismiss the appeal under Rule 106 (19). However, counsel for the respondent admitted that the appellant's failure to file a written submission to the appeal had not occasioned a miscarriage of justice to the parties.

The appellant conceded that he had not filed a written submission to the appeal. He maintained, nonetheless, that no failure of justice had been

caused to the respondent. Hence, the Court should hear and determine the appeal on merit.

We are constrained to agree with the appellant. One, the purpose of filing a written submission is to enable the Court to better understand the nature of the appeal, the issues involved, and ultimately adjudicate upon and determine the appeal properly. After filing a written submission, the respondent would also file a reply thereto. By failing to file a written submission, the appellant waived his opportunity to state his appeal to the Court. Such omission does not prejudice the case of the other parties, here the respondent company. As the failure to file a written submission did not prejudice the case of either party, we find no merit in the preliminary objection. Under the circumstances, we overrule the preliminary objection with costs. We order that the appeal proceeds to hearing on a date to be fixed by the Registrar.

DATED at **DAR ES SALAAM** this 13th day of April, 2012.

E. N. MUNUO
JUSTICE OF APPEAL

H. R. NSEKELA
JUSTICE OF APPEAL

S. J. BWANA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(J. S. Mgetta)
DEPUTY REGISTRAR
COURT OF APPEAL