IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 7 OF 2003

NATIONAL HOUSING CORPORATION..... APPELLANT

VERSUS

ABDALLAH MDOPE & OTHERS..... RESPONDENT

RULING

Date of last order: **11/10/2005**
Date of Ruling: **31/5/2006**

MANENTO, JK:

The applicants were employees of the National Housing Corporation. They were retrenched or rather laid redundant sometimes in 1998. After their retrenchment, they were paid what was due to each one of them. They were 195 employees including their representative Abdallah S. Ndope. After those payments, under the leadership of Abdallah S. Ndope, they instituted an Employment Cause at Kisutu Resident Magistrate's Court, which cause was referred to the court by a labour officer under section 132 of the Employment Ordinance, Cap. 366. They were claiming for some arrears of salaries and other payments they thought due. Judgment was entered in their favour. The Respondent were aggrieved by that decision.

They appealed to the High Court. The decision at the Subordinate Court was based on a Circular No.1 of 1994 which circular was not applicable to the respondents Corporation. On appeal, the Court ruled that the said circular was not applicable to the applicants, hence allowed the appeal. The applicants were aggrieved by that decision but did not take an immediate legal action. They found that the time limit for the filing of an application for leave to appeal to the Court of Appeal was against them. They filed the present chamber summons.

The chamber summons which is properly filed under sections 68(e), 95 of he Civil Procedure Code, 1966, section 14(1) of the Law of Limitation Act, 1971, section 4(1)(c) of the Appellate Jurisdiction Act No.15/1979 as amended by Act No.17/1993 and rule 43(a) of the Court of Appeal Rules 1979 and any other enabling provision of the law, the Applicants wanted to be heard on an application for the following orders:-

1. That this court may be pleased to **extend time** within which to file the application for **leave** to appeal to the Court of Appeal of Tanzania.
2. That this Court be pleased to grant **leave** to appeal to the Court of Appeal of Tanzania.

The chamber summons was supported by an affidavit of H. Ndolezi, advocate who had been acting for the applicants at the High Court. A counter affidavit was also filed by an advocate, one E. Msuya who had also the conduct of the case for the respondent's to the High Court.

Mr. Ndolezi, learned counsel for the applicants honestly deponed that after the judgment of this court, he filed a **Notice of Appeal** to the Court of Appeal and applied for copies of the proceedings, judgment and decree before he was **specifically instructed** by the applicants to act for them in the appeal so that they could be in time. In reply to the question of the notice of appeal, Mr. Msuya, learned counsel deponed that he was not served with a copy of that notice, though he was served with the copy of a letter to the High Court requiring the copies of the proceedings, judgment and decree for the purpose of appeal. In their submissions, Mr. Ndolezi, learned counsel submitted that, that issue should be left for determination in a later court. But Mr. Msuya, learned counsel submitted that, failure to supply the respondent with the copy of the notice of Appeal to the Court of Appeal was fatal. However, he did not elaborate much. But, failure to give copy of notice of appeal to the respondent is fatal and

therefore, there is no effective notice to the Court of Appeal. That is the law and it cannot wait for a later court to determine. Now, having held that there was no notice of appeal to the Court of Appeal, no leave to appeal to the Court of Appeal could be granted. That answers the 2nd prayer in the chamber summons.

On his 4th and 5th paragraphs of the affidavit, the learned counsel deponed that he could not take necessary measures to process the appeal because he could not get instructions early from the applicants due to the fact that they are scattered about in the country so that, at the time he was instructed to act, time within which to file the application for leave to appeal had passed. The same had been repeated on submissions. However, the learned counsel for the respondent deponed in his counter affidavit and equally in his submissions that both the applicants and their advocate were negligent. I could agree that the applicants are scattered in the country but they had theire representative and that is why they chose one of them to represent them all.

But if I could go back, the learned counsel for the applicant had deponed and submitted that he first acted without instructions when he gave a notice of appeal to the Court of Appeal and writing to the

Registrar of the High Court demanding for the copies of the proceedings, judgment and decree. The learned counsel for the respondent urged that if he had acted without instructions earlier, then he should have continued to act without instructions. I don't agree with that submission. No advocate can act sue motto. To act so deprives that advocate locus standi and on this application, I would say that the alleged notice to the Court of Appeal as filed by some one with no locus standi to give such notice and vitiated the said notice . Mr. Ndolezi's instructions lapsed at the High Court and until when he was further instructed, he lacked jurisdiction to act for the applicants.

Mr. Msuya learned counsel for the respondents urged that lack of instructions in time are not sufficient cause for the grant of the extention of time to file an application for leave to appeal to Court of Appeal. Secondly that, there are no legal issue to be determined by the Court of Appeal. That issue as to when Circular No.1/94 was in operation, whether it was before the retrenchment of the applicants or it was after their retrenchment was not a legal issue nor was it a mixture of law and facts. There was no much submissions to show that there was a point of law, other than just saying that the decisions of both the subordinate court and the High Court were based on that

Circular No.1/1/1994. It is true that the decisions were based on that circular and the issue about date was not really a point of law. It was a point to be proved as to what date it was on operation, a fact which was not proved. That was and is not a point of law for the determination of the Court of Appeal.

Having said so, I come to the conclusion that there are no sufficient cause for the delay nor was there any legal point for the determination of the Court of appeal. The application is therefore dismissed. No orders for costs is made for the reason that it was a labour cause and secondly that even its execution would be second to impossible. The applicant's whereabouts can hardly be traced, having been retrenched from their employments. That is all.

A.R. Manento

JAJI KIONGOZI.

31/52006

Coram: P.A. Lyimo, DR-DSM

For the Applicants; Present in person.

For the Respondent – Msuya.

Order:

Ruling delivered in court this 31st May, 2006 in the presence of the applicants and Mr. Msuya learned counsel for the Respondent.

P.A. Lyimo

DISTRICT REGISTRAR-D'SALAAM

31/5/2006