IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 185 OF 2002

BONIFACE SIGAYE & 72 OTHERS ..... APPLICANTS

VERSUS

TANZANIA REVENUE AUTHORITY ..... RESPONDENT

Date of last Order: 17/04/2008
Date of Ruling : 10/06/2008

RULING

MLAY, J.

This ruling, is on an application for review of the judgment of this Court delivered on 27/6/2006 in Civil Appeal No. 185/02. In that judgment, this Court dismissed an appeal by BONIFACE SIGAYE and 72 OTHERS from the ruling of the Resident Magistrates Court of Dar es Salaam in Employment Cause No. 235 OF 1997.

The case in the Magistrates Court was based on a purported report made by a Labour Officer, under Section 132 of the Employment Ordinance Cap 366. The Report to the Magistrate was made by one Mrs. Uiso, Acting Labour

Commissioner. This Court dismissed the appeal, on grounds that the report made to the Magistrate was not a report by a Labour Officer.

The appellant's being aggrieved by that decision filed a "MEMORANDUM of REVIEW under Section 78 (a) of the Civil Procedure Code, 1966.

In the memorandum the applicant have applied for review on the following grounds:

> *"1. That his Lordship judge erred in law to strike out the matter instead of ordering the report to magistrate to be signed by the Labour Officer and remit the same for retrial in the RMs Court if the appellants wishes to do so for the interest of justice".*

Both parties to the application have filed written submissions. The applicants having quoted the provisions of Order XVLII Rule 1, have argued that, "***their main ground for this Application for review is that there is an error apparent on the face of the record on the judgment intended to be reviewed".*** They submitted that "***the error in***

signing the Report to the Magistrate had nothing to do with the Appellants". They argued that, exercising their statutory right the appellants reported the matter to the Labour Officer who was supposed to report to the magistrate but unfortunately it transpired that the report was signed by a person who is not empowered by law to sign the same. They complained that they have been denied their constitutional right of being heard for no fault on their part.

They referred to Civil Appeal No. 6 of 2003 S.S Makorongo Vs Severino Consigilio (unreported) in which the Court of Appeal stated that a mistake committed by people in authority, cannot be imputed on the parties or an advocate.

They further quoted the provisions of Article 13 (6) (a) of the Constitution of the United Republic of Tanzania and contended that the judgment to be reviewed has denied them their constitutional right under that article.

The Respondents have argued that in the eyes of the law a report submitted to the Magistrate which was not sgined by the Labour Officer is not a report by the Labour Officer and therefore there was no report before the Court and this court cannot order something which was not in existence to be referred back for signature. On the case cited by the Applicants, Civil Appeal No. 6/2005, S.S. Makongoro Vs

Severino Consigilio, the Respondents advocate argued that, in that case the party had lodged Notice of Appeal and a Memorandum of Appeal, but the Registrar had not endorsed the relevant documents lodged. He argued that the case is distinguishable from the present case in which there was no report submitted to the court since the report was not signed by a Labour Officer.

Reverting to the provisions of Order XLII of the Civil Procedure Code, 1966 which govern review, the Respondents advocate submitted that the Applicants have totally failed to avail any of the grounds which would warrant for an the application for review. The advocate invited this Court to invoke the provisions of Order XLII Rule 4 (1) of the Civil Procedure Code which states:

> *"When it appears to the Court that there is no sufficient ground for a review, it shall reject the application".*

The Applicants filed a spirited reply to the Respondents submissions. They in effect reiterated their argument that after the Court found that the report was not signed by the Labour Officer it ought to have ordered the defect be rectified and remitted to the Resident Magistrates Court for trial. They also repeated their complaint of denial of denial of their

constitutional right to be heard under article 13 (b) of the Constitution. On the application of Order XVLII Rule 1, they emphasised that the relevant part is that a review can be sought:

> *"on account of some mistake or error aparent on the face of the record, or for any other sufficient reason".*

Having given due consideration to the application for review and the well argued submissions filed by both parties, I have no hesitation to find that the applicants have misconceived the scope of the prowes of review of the court, under Order XLII Rule 1.

The said Order XLII Rule 1 provides as follows:

1- (1) Any person considering himself aggrieved-

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; an

b) by a decree or order from which no appeal is allowed, and who, ***from the discovery of new and important matter*** *or* ***evidence*** *which, after the exercise of due diligence, was no within his knowledge or could not be produced by him the time the decree was passed or order made, or* ***on account of some mistake or error apparent on the face of the record,*** *or* ***for any other***

sufficient reason, *desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order".*

There are three grounds on which an application for review may be made. The first ground is, "***from the discovery of new and important matter or evidence".***

The second ground is, "on ***account of some mistake or error apparent on the face of the record***" and the third ground, is ***"for any other sufficient reason".***

In the applicants Memorandum of Review, the applicants have alleged "***that his Lordship erred in law to struck out (sic) the matter instead of ordering the report to Magistrate to be signed by the labour officer and remit the same for retrial.....".*** The application is therefore not based on the first ground which is upon "***discovery of new and important matter or evidence".*** The applicants have argued that, the application is based on the second ground, which is, "***on account of some mistake or error apparent on the face of the record".*** With respect, an error in law, which is based or an arguable point of law, is not an error apparent on the face of the record. If the applicants have to go into the decision of the Court of Appeal in S.S. Makongoro Vs

Severino Consigilio and to the provisions of Article 13 (b) of the Constitution of the United Republic, to establish the legal error committed by this Court, this cannot be an error apparent on the face of record. This is an appealable matter on legal point.

This court having made it decision that the report made by the Acting Labour Commissioner was not a report made by the Labour Officer and was therefore incompetent, it cannot again look at its own decision and say the report can be made competent by being signed by the Labour Officer. The issue was not even that the report was "***signed***" by the Acting Labour Commissioner instead of a Labour Officer, but that, contrary to the provisions of section 132 of the Employment Ordinance Cap 366, it is the Acting Labour Commissioner who informed the magistrate or made a report to the magistrate, instead of the Labour Officer. Be that as it may, if that error can be cured by sending the report back to the Labour Officer, it is not a matter which is apparent on the fact of record, but a legal argument which can be made before an appellate Court. It cannot therefore be a ground of review.

The applicants have not argued or demonstrated that there is "***any other sufficient cause***" for this court to review its judgment and there being no sufficient grounds shown for review, this application is rejected with costs.

If the Applicants wish to challenge the judgment on a point of law, they have a right to appeal to the Court of Appeal of Tanzania against that judgment and if they think they have been denied a constitutional right under Article 13 (6), the avenue is to institute proceedings in accordance with the provisions of the Basic Rights And Duties Enforcement Act Cap 3 R.E 2002.

In the final analysis and for the reasons given above, this application is rejected with costs.

J. I. Mlay,

JUDGE.

Delivered in the presence of Ms. Mwantumu Legal Officer of the Respondent and Mrs. DARUS BAKARI and JUMA KABATI two of the represented 72 applicants, this 10th day of June 2008.

J. I. Mlay,

JUDGE

10/06/2008.

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