

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

**(CORAM: JUMA, Ag. C.J., MJASIRI, J.A. MWARIJA, J.A. MZIRAY, J.A.
And MKUYE, J.A.)**

CIVIL APPEAL NO. 96 OF 2012

**TANZANIA TEACHERS UNION.....APPELLANT
VERSUS**

- 1. THE CHIEF SECRETARY.....1ST RESPONDENT**
**2. HON. MINISTER, PRESIDENT'S OFFICE
PUBLIC SERVICE MANAGEMENT.....2ND RESPONDENT**
**3. GENERAL (sic) PERMANENT SECRETARY
MINISTER OF EDUCATION & VOCATIONAL
TRAINING.....3RD RESPONDENT**
4. ATTORNEY GENERAL.....4TH RESPONDENT

**(Appeal from the Ruling and Order of the High Court of Tanzania
Labour Division)**

(Wambura, J.)

dated the 2nd day of August, 2012

in

Misc. Application No. 96 of 2012

RULING OF THE COURT

28th April, & 5th June, 2017.

JUMA, Ag. C.J.:

This Full Bench of the Court was convened to resolve apparent conflicting decisions by this Court, on the question whether or not appeals from decisions of the High Court Labour Division (hereinafter referred to as

the Labour Court) under section 57 of the Labour Institutions Act 2004 (hereinafter referred to as **the LIA**); require leave to appeal to the Court of Appeal.

On one side of the conflict stands the cases of— **Zayumba Abedi Hussein A. Akida and Others v. Tanzania Ports Authority**, Civil Appeal No. 18 of 2009; **Hussein Shabenga Jumanne and 6 Others v. Tanzania Ports Authority**, Civil Appeal No. 29 of 2009 and **Tanzania Breweries Limited v. Leo Kobelo**, Civil Appeal No. 29 of 2009 (all unreported) — where the Court took a stand that leave to appeal is mandatory.

There are also two decisions—in **Chama Cha Walimu Tanzania vs. The Attorney General**, Civil Application No. 151 of 2008 and **Bulyanhulu Gold Mine (T) Ltd vs. Nicodemus Kajungu & 1511 Others**, Civil Application No. 37 of 2013 (both unreported) —where the Court took an opposite stand, that leave is not a mandatory requirement under section 57 of the **LIA**. In **Chama Cha Walimu Tanzania vs. The Attorney General**, the Court stated that section 57 of the LIA provides an automatic right of appeal to this Court. In **Bulyanhulu Gold Mine (T) Ltd** the Court was more forthcoming, restated that appeals from the Labour

Court under section 57 of the LIA are automatic, and do not require leave to appeal under section 5 (1) (c) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2002] (the AJA). The Court stated that section:—

"...[section 57] permits a party to appeal to this Court without recourse to section 5 (1) of the Appellate Jurisdiction Act, Cap. 141 (AJA), and ...it provides a different avenue to that covered under section 5 of the AJA."[Emphasis added].

The setting providing the background to this matter is that the respondents, CHIEF SECRETARY (1ST Respondent), MINISTER, PRESIDENT'S OFFICE PUBLIC SERVICE MANAGEMENT (2ND Respondent), GENERAL SECRETARY(*sic!*), MINISTRY OF EDUCATION AND VOCATIONAL TRAINING (3RD Respondent) and THE ATTORNEY GENERAL (4TH Respondent) filed an application in the Labour Court to seek a temporary injunction to restrain the appellant TANZANIA TEACHERS UNION and its members from calling or participating in an industrial action (strike). They in addition urged the Labour Court to declare to be unlawful, acts of calling for or participating in the intended strike.

Wambura, J, the trial judge, declared the strike which had by then been going on for three days, to be unlawful. She further directed the parties to return back to the negotiation table in line with their expressed desire to reach an amicable settlement. Aggrieved and dissatisfied with the Ruling, the appellant lodged this appeal to this Court.

However, before the appeal could be set down for hearing before a panel of three Justices, the Chief Justice directed this Full Bench to convene in order to first resolve the question of leave to appeal from decisions of the Labour Court.

We must point out here that there was an earlier attempt by the Full Bench in **Flamingo Cafeteria vs. Denis Kalua and Said Mng'ombe and Hussein Shambenga and Seven Others vs. Tanzania Ports Authority**, Consolidated Civil Revisions Nos. 2 and 5 of 2015 (unreported) — to resolve the conflicting decisions of the Court on issue of leave to appeal from decisions of the Labour Court. That Full Bench was convened to revise the Rulings of two Judges of the Labour Court (Rweyemamu, J., and Aboud, J.). That attempt to resolve conflicting decisions did not get far because the Full Bench stated that sitting as it was in the exercise of its revisional jurisdiction, it had no jurisdiction to deal with the question

whether appeals from the Labour Court to this Court require prior leave under section 57 of the LIA. Only a Full Bench sitting on an appeal, it stated, can resolve conflicting decisions by way of an appeal:

"...Having carefully read S. 4 (3) of the Act [AJA], we were wondering whether that section empowers this Court to resolve the two conflicting decisions of this same Court. Our understanding of S. 4 (3) of the Act is that it empowers this Court to call for and examine the record of any proceedings before the High Court with a view to satisfying itself as to its correctness, legality or propriety of any finding and in case the Court comes across any of the above mentioned deficiency, may revise the same..... But it is clear that a conflict exists between the two mentioned cases. How can such conflict be resolved?

*So, it is clear now where it is shown that a conflict exists between two decisions of the Court on the same matter, **the proper procedure in resolving the conflict is not by way of invoking revisional or review powers but it is by way of an appeal.**"[Emphasis added].*

At the hearing before this instant Full Bench on 28th April, 2017, the appellant was represented by Mr. Gabriel Simon Mnyele, learned Advocate and the respondents were represented by Mr. Obadiah Kameya, learned

Principal State Attorney, who was assisted by Mr. Paul Shaidi, learned Senior State Attorney, Ms. Ellen Rwijage, learned Senior State Attorney and Mr. Hangi Chang'a, learned State Attorney. Learned counsel for both the appellant and for the respondents, did not file written submissions. We granted them leave to present their submissions orally.

Mr. Audax Kahendaguza Vedasto and Mr. Frank Mwalongo, who had graciously agreed to be *Amici Curiae* (friends of the Court) in the matter, both filed detailed written submissions supported by authorities which in their totality brought out many legal propositions for our consideration. We thank the two friends of the Court for the quality of their submissions which was built on detailed research, industry and diligence.

Mr. Mnyele counsel for the appellant prefaced his submissions by expressing that he will not side with any of the two conflicting positions of the Court on whether leave is a mandatory requirement for appeals from the Labour Court to the Court of Appeal.

He submitted that thirty eight (38) years have since passed since the AJA was enacted in 1979. He submitted further that although the AJA is a general law that generally makes provisions governing appeals to the Court

of Appeal; many events touching on statutory right of appeal have taken place since the year when the AJA came into operation. He highlighted major changes that had taken place during the interlude of thirty eight years of operation of the AJA. These changes include the time when Tanzania had only one High Court at main registry and its sub-registries, to the current position where there are special divisions of the High Court. Mr. Mnyele contended that the statutory rights of civil appeals to the Court are no longer restricted to the avenues of appeals provided under section 5 of the AJA.

He submitted that the first signs of changing statutory landscape governing appeals beyond the AJA began to emerge with the establishment of the Divisions of the High Court. Mr. Mnyele identified the establishment of the High Court Land Division (**HCLD**), the High Court Commercial Division (**HCCD**) and the Labour Court. Alongside the emergence of the divisions of the High Court, he identified several written laws which were enacted to create rights of appeal to the Court of Appeal from such Tribunals as the Tax Revenue Appeals Tribunal under the Tax Revenue Appeals Act, Cap 408, whose appeals lie to the Court of Appeal.

To prove his point that there are other written laws outside the statutory framework of the AJA which provide for the right of appeal to the Court of Appeal, Mr. Mnyele referred us to the provisions of section 14 (1) of the Basic Rights and Duties Enforcement Act, 1994 (CAP. 3 R.E. 2002) which allows appeals from the High Court to the Court of Appeal. The learned counsel also referred to section 17 (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act (CAP. 310, R.E. 2002) which provides for the statutory right of appeal directly to this Court. He also gave yet another example of Article 83 (4) of the Constitution of United Republic of Tanzania of 1977 which allows appeals from the High Court to the Court of Appeal in parliamentary election petitions.

Mr. Mnyele gave his perspectives that aside from the AJA, there is now a plethora of statutory rights of appeal to the Court of Appeal and section 57 of the LIA is one of the so many other avenues of appeals to the Court. Mr. Mnyele also argued that the right of appeal to the Court under the LIA is not limited to decisions from the Labour Court. He referred us to the provisions of Rule 53 (1) of the Labour Court Rules, 2007 (GN No. 106 of 2007) which allows the Labour Commissioner to make reference to the Court of Appeal.

The learned counsel went ahead to offer his legal proposition by submitting that where the Parliament has enacted a general law governing appeals to the Court (like **the AJA**) and also enacted more specific laws like **the LIA** (which governs appeals from the Labour Courts), in case of conflict between the general laws and more specific laws, courts should be guided by the more specific enactments. To support his legal proposition that the "General Acts of Parliament" that should give way to the "Specific Acts of Parliament" he referred us to an excerpt from a book, **N.S.**

BINDRA'S INTERPRETATION OF STATUTES Ninth Edition:

"6. CONFLICT BETWEEN GENERAL ACTS AND SPECIAL STATUTES

In case of statutes on same subject the rule of construction is to so interpret the enactments that they shall be if possible consistent. But if they cannot be fairly read in such a way as to give full meaning to each consistently with the other, then one must give way, and the one to give way will be general provision. In such a case the later special Act will be taken to have amended the earlier general Act insofar as the matters dealt with in the specific Act are concerned. The court, however, will assume that the legislature, in enacting the sections as separate provisions of the same statute or groups of

statutes, intended full effect to be given to each. It is only when there becomes apparent an inconsistency which it is impossible to avoid by any reasonable interpretation of the words used, that a court will in general draw the conclusion that the legislature intended the later special statute to repeal the earlier general statute."

Although Mr. Mnye le began his submission by insisting his tenuous neutrality with regard to the question of leave in appeals from Labour Courts, he slowly tilted towards a definite position that when Parliament enacted section 57 of the LIA in 2004, it must have known that it had earlier on in 1979 enacted section 5 (1) (c) of the AJA which had the requirement of leave to appeal to the Court. And by omitting any mention of "leave" in section 57 of the LIA, he argued, Parliament must not be taken to have intended to impose the requirements for prior leave to apply to appeals from Labour Court.

Ultimately, Mr. Mnye le came round to submitting that the decision of the Court in **Bulyanhulu Gold Mine (T) Ltd** (supra) which reiterated that appeals from the Labour Division of the High Court lie to the Court without prior leave to appeal reflects the correct statement of the law.

When his turn came to submit, Mr. Kameya commenced his submissions by staking a position that the words "*except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal*" appearing in section 5 (1) of the AJA anticipates enactment of other written laws apart from the AJA, to regulate the mode of appealing to the Court of Appeal.

But, while on one hand he expressed his agreement with Mr. Mnyele that paragraphs (a), (b) and (c) of section 5 (1) provides distinct avenues of appealing to the Court, Mr. Kameya had a different take on how section 5 of the AJA affects the scope of section 57 of LIA. Mr. Kameya learned Principal State Attorney does not dispute that in its plain reading, section 57 of the LIA neither mentions the requirement for leave to appeal, nor does it prescribe the procedure for determination of points of law before the Court of Appeal can be seized with appellate jurisdiction:

Section 57 of the LIA provides:

"57. Any party to the proceedings in the Labour Court may appeal against the decision of that court to the Court of Appeal of Tanzania on a point of law only."

But, according to the learned Principal State Attorney, on his reading of AJA which he described as "the General Act" prescribing appeals to the Court and its Court of Appeal Rules of 2009, Parliament must have intended that appeals from the Labour Court under section 57 require prior leave of the High Court to appeal and prior certificate of points of law issued by the High Court.

Mr. Kameya next made an ingenious attempt at interpolating the requirement for leave to appeal into section 57 of the LIA, effectively subjecting the provisions of appeal under section 57 of the LIA to the provisions of leave to appeal under the AJA.

He submitted that although civil appeals from the Labour Court on matters of fact are not envisaged under the above mentioned section 57, he urged us to agree with his proposition that an intending appellant seeking to appeal on those matters of fact which are outside the purview of section 57, should resort to paragraph (c) of section 5 (1) of AJA and seek leave to appeal on matters of fact. Mr. Kameya believes that leave sought under section 5 (1) (c) of the AJA will open the door to enable an appeal from the Labour Court to the Court on matters of fact. The relevant section 5 (1) (c) of the AJA states:

"5.-(1) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal—

(a)...

(b)...

(c) with the leave of the High Court or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court."

He elaborated his position by adding, that if an appeal is on point of law, then the intending appellant should be guided by section 57 but shall have to seek certification of point of law in accordance with the procedure under the AJA and the Court of Appeal Rules. If, on the other hand, the intended appeal is on matters of fact, then leave under section 5 (1) (c) is mandatory for appeals from Labour Court. In Mr. Kameya's understanding, the scope of section 5 (1) of the AJA which envisages other laws to prescribe appeals, controls appeals from the Labour Court under section 57 of the LIA.

Like Mr. Kameya, his colleague Mr. Shaidi buttressed the position that although section 57 of the LIA does not give any guide on how to determine or discern a point of law for purpose of appeals from Labour Court to the Court of Appeal, it should not be left to the Court of Appeal to

determine whether grounds of appeal before it raises point of law. A party intending to appeal from Labour Court must first seek the certificate on points of law from the High Court. To support this stance, Mr. Shaidi referred us to a decision of the Court to strike out an appeal in **Mohamed Mohamed & Khamis Mselem vs. Omar Khatib**, Civil Appeal No. 17 of 2008 (unreported) because the two appellants had not obtained leave to appeal to this Court as is required by section 5 (1) (c) of the AJA.

Mr. Vedasto the *Amicus Curiae*, commenced by submitting that at the centre of the two conflicting positions of the Court, is the determination of the scope of the words "*except where any other written law for the time being in force provides otherwise*" which appears under Section 5 (1) of the AJA-

"5 (1) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal-

(a) against every decree...made by the High Court in a suit under the Civil Procedure Code, in the exercise of its original jurisdiction;

(b) against the following orders of the High Court.....

(c) with leave of the High Court or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court."

Mr. Vedasto faulted the decisions of the Court in **Hussein Shabenga Jumanne, Zayumba Abedi Hussein A. Akida** (supra) and **Tanzania Breweries Limited v. Leo Kobelo** (supra) for ignoring the plain wording of section 57 of the LIA. He also blamed these decisions for interpolating into section 57 of the LIA the requirement of leave to appeal in terms of paragraph (c) of Section (5) (1) of the AJA.

Mr. Vedasto, rejected the submissions by Mr. Kameya to the effect that despite section 57 of the LIA restricting appeals from Labour Court to only points of law, one can navigate around this provision so as to appeal to the Court on matters of fact by seeking leave in accordance with the provisions of paragraph (c) of section 5 (1) of the AJA. He demonstrated the incorrectness of the legal proposition put forward by Mr. Kameya that all other written laws which provide for statutory rights of appeal like section 57 of the LIA, should be read subject of invincible control by the provisions of the AJA. He cited to us the statement of law which the Full

Bench of this Court made in **Freeman Aikaeli Mbowe and the Attorney General vs. Alex O. Lema**, Civil Appeal No. 84 of 2001 (unreported). In **Freeman Aikaeli Mbowe and the Attorney General** (supra) the Court faulted its earlier decision in **Leonsi Silayo Ngalai v. Justine Alfred Salakana And Another**, Civil Appeal No. 38 of 1996 (unreported) for suggesting that right of appeal under Article 83 (4) of the Constitution derives its authority from section 5 (1) of the AJA, which according to Mr. Vedasto, is not a correct position of the law:

"...The Court construed Article 83 (4) of the Constitution as being one such written law referred to in this sub-section [s. 5(1) of the AJA]. The Court said:-

'...it is apparent that the provisions of section 5 of the Appellate Jurisdiction Act, 1979 do not apply to all cases. Exceptions are recognized where there is a written law providing for a contrary position. There is no doubt in our minds that Sub-Article (4) of Article 83 of the Constitution is such written law. It provides clearly for the right of appeal against any decision of the High Court in election petition cases.' (Emphasis is supplied).

This would appear to suggest that Article 83 (4) of the Constitution derives its authority from section 5 (1) of the Appellate Jurisdiction Act was enacted to make provision relating to appeals to the Court of Appeal. We think that it would be

wrong to construe that sub-section as the basis for invoking Article 83 (4), a provision of the very basic law which creates the sub-section. Thus we are of the view that where an appeal from the decision of the High Court lies to the Court of Appeal under Article 83 (4), of the Constitution the appeal is to be filed solely in reliance of that provision and it would be unnecessary, indeed wrong, to make any reference to section 5 (1) of the Appellate Jurisdiction Act."[We have added emphasis].

The learned Counsel submitted further that the AJA and the LIA which both create the statutory rights of appeal to the Court of Appeal do not override each other. He argued that because these two pieces of legislation trace their common authority back to the provisions of Article 117 (4) of the Constitution, the clear provisions governing appeals under LIA which do not mention the requirement for leave to appeal should not be subordinated or subjected to the requirements for such leave under section 5 (1) (c) of the AJA.

By examples, Mr. Vedasto went on to illustrate why he unreservedly support the line of authorities of the Court—in **Bulyanhulu Gold Mine (T) Ltd** (supra) and in also **Tanzania Breweries Limited v. Leo Kobelo**

(supra), which insist that leave is not a prerequisite for appeals from Labour Court to this Court under section 57 of the LIA. According to Mr. Vedasto, the prevailing interpretation of the words "*except where any other written law for the time being in force provides otherwise*" appearing under section 5 (1) of the AJA confirms the correct legal proposition that the Appellate Jurisdiction Act is not the only statutory avenue for appealing to the Court of Appeal, but there are other written laws, like section 57 of the LIA, which in their independent rights, allow appeals to this Court without leave. As another example, he referred to section 47 (1) of the Land Disputes Courts Act Cap 216 (R.E. 2002) as one of several written laws which provide for the right of appeal to this Court outside the framework of the AJA.

Mr. Vedasto cemented his stance by referring to the example of Article 83 (1) of the Constitution which confers on the High Court with jurisdiction to deal with election petitions arising from Parliamentary Elections and sub-article (4) of Article 83 which creates constitutional right to appeal to the Court of Appeal from decisions of High Court in election petitions without relying on the provisions of the AJA. The relevant Article 83 (4) states:

*"83 (4) **There shall be a right of appeal to the Court of Appeal of Tanzania** against a decision of the High Court in any matter which was heard in accordance with the provisions of this Article."*
[Emphasis added].

Mr. Vedasto cited the decision of the Court in **Attorney General vs. Philemon Ndesamburo**, Civil Appeal No. 14 of 1998 (unreported) as an example of the position which this Court took to insist that statutory conditions enacted in one Statute should not be read into the provisions of another Statute. The Court in **Attorney General vs. Philemon Ndesamburo** was moved to determine whether leave was required in an appeal against prerogative order of *Certiorari* issued by the High Court. The Court considered the scope of section 17 (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act which provides: **"Any person aggrieved by an order made under this section may appeal therefrom to the Court of Appeal..."**... and said:

*"...We do not think that the issue need to detain us. Under section 5 (1) of the Appellate Jurisdiction Act, 1979, and as this Court held in **Leonsi Silayo Ngalai vs. Hon. Justine Alfred Salakana & Attorney General**,*

*Civil Appeal No. 38 of 1996, it is obvious that the right of appeal to this Court is not granted by the Appellate Jurisdiction Act, 1979, alone but that there are other laws providing for such right. In **Ngalai** the other law was the Constitution of United Republic of Tanzania, 1977. In the present case it is the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance as amended. So, there was no need for leave to appeal in the present case."....*

The learned counsel further galvanized his position by submitting that if Parliament had intended that leave should be an integral part of section 57 of the LIA in 2004, Parliament could have done so as it did earlier in 2002 when it enacted Section 47 of the Land Disputes Courts Act, but chose not to when enacting section 57 of the LIA in 2004. In his written submissions, Mr. Vedasto aptly reiterates his belief:

*"I see nothing on the face of the two statutes or in theory suggesting that the Legislature in 2002 thought that land appeals, which it had allowed through **section 47** of the 2002 Act, should lie with leave and put that requirement in black and white and that two years later, the same Legislature thought that labour appeals, which it had allowed through **Section 57** of the 2004 Act, should lie*

with leave and yet decided not to put that requirement in black and white. The right presumption in such cases, in my humble view, is that this time the Legislature did not have that intention of imposing a requirement of leave as the style of stating that the requirement was known to it- requiring it by stating it by express words."

He referred us to an excerpt from a book authored by N.S. Bindra, **Interpretation of Statutes**, 7th Ed. The Law Book Company (P) Ltd, Allahabad, 1987, page 207.

"The legislative language will be interpreted on the assumption that the Legislature was aware of existing statutes, the rules of statutory construction, and the judicial decisions and that if a change occurs in legislative language a change was intended in legislative result."

Mr. Vedasto similarly submitted that the plain meaning of the right of appeal on point of law under section 57 of the LIA does not in any way countenance the suggestion by the Court in **Tanzania Breweries Limited v. Leo Kobelo** (supra) that the Labour Court must first certify that there is a point of law for determination by the Court of Appeal. The learned counsel urged us to depart from this decision in as much as it was

influenced by the Court's lifting the requirement for leave to appeal under section 5 (2) (c) of the AJA and planting it into what are otherwise clear provisions of section 57 of the LIA which do not envisage such leave. He submitted that as long as appeals from decisions of the Labour Court under section 57 of the LIA do not require leave or prior certification of points of law, the Court should not read anything into that provision.

Next, Mr. Vedasto concluded his submissions by highlighting the significance of the right of appeal that is clearly recognized by Article 13 (6) (a) of the Constitution which states:

13 (6) To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely:

*(a) when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and **to the right of appeal** or other legal remedy against the decision of the court or of the other agency concerned; [Emphasis added].*

The right of appeal as is provided for under section 57 of the LIA trace back to the constitutional right of appeal under Article 13 (6) (a), he submitted. And once that right of appeal is clearly provided for, it should not be hurdled by the Court imposing restrictions regarding leave or certification of points of law.

On his part, Mr. Mwalongo, the other *Amicus Curiae* supported the stand that leave to appeal is not required under section 57 of the LIA. He submitted that the conflicting decisions of the Court on the issue of leave in appeals from the Labour Court which have existed for over seven years should be resolved now. He submitted that if the words "*except where any other written law for the time being in force provides otherwise*" in section 5 (1) should be of any guide, the conflicting decisions of the Court were unnecessary because other written laws like section 57 of the LIA are envisaged to provide other independent avenues for appeals to the Court. That is, if other written laws provide for the right to appeal, then section 5 of the AJA should not be brought to restrict that right, he submitted.

Mr. Mwalongo submitted that section 57 of the LIA stands on its own independent feet and it marks a complete departure from the statutory avenues for appealing to the Court furnished under section 5 of the AJA.

The learned counsel also submitted that although there are several decisions under labour laws that are appealable to the Court, section 57 of the LIA treats all these different types of decisions arising from labour laws as appealable to the Court on point of law without any restrictions. He gave the examples of section 94 of the Employment and Labour Relations Act CAP. 366 RE 2002 (hereinafter referred to as the **ELRA**) and section 52 of the LIA which identify several categories of decisions which may be appealable directly to the Court of Appeal. Mr. Mwalongo identifies the following other decisions envisaged by the ELRA and the LIA which may end up as appeals to the Court without requirements for leave to appeal:

"...(i) can be a judgment, decree, ruling or order from the exercise of its original jurisdiction under section 94 (1) (d) & (e) of the Employment and Labour Relations Act.... And Section 52 of the Labour Institutions Act..., or (ii) can be a judgment and decree or ruling from the exercise of its revision or review or appellate jurisdiction other than original jurisdiction under section 94 (1) (b) of the Employment and Labour Relations Act... and section 52 of the Labour Institutions Act..."

Learned counsel further submitted that the fact that section 57 of the LIA is silent on whether or not leave is required with respect of any of the above categories of decisions from the labour laws, should be taken to be a clear and intentional departure from the requirement of leave under section 5(1)(c) of the AJA. He insisted that it is only when a Statute indicates that the Legislature intended that it should be read together with another statute that is when courts should resort to that other statute. He gave the example of that clear intention of the legislature in Rule 55 (1) of the Labour Court Rules (GN No. 106 of 2007) intentionally adopted the Tanzania Court of Appeal Rules, 2009 to govern the procedure for appealing to the Court from decisions of the Labour Court. The relevant Rule 55 (1) of the Labour Court Rules states:

"Subject to the provisions of section 57 of the Act, any appeal to the Court of Appeal of Tanzania shall be in conformity or as nearly as possible with the provisions of the Court of Appeal of Tanzania Rules, 1979."

In his brief rejoinder, Mr. Mnye submitted that the scope of section 57 of the LIA is crystal clear that leave to appeal is not a statutory requirement, and there is no need to read that requirement into section 57.

From the totality of the submissions by the parties and friends of the Court, we agree with the submissions of Mr. Mwalongo that section 57 of the LIA and section 5 of the AJA provide distinct and separate avenues of civil appeals to the Court and section 57 was a complete departure from the obligation to obtain leave under section 5 (1) (c) of the AJA. We also think that within the areas which the legislature has assigned for their respective operation, both the AJA and the LIA should not only be given effect to, but should in addition be given harmonious construction to ensure that one statute does not override the other.

Further, as we have just suggested, it seems clear to us that the harmonious construction of several statutes which govern appeals to this Court must inevitably begin from the provisions of the Constitution which empower Parliament to make laws governing appeals. Through sub-articles (1) and (4) of Article 117 which we reproduce below, the Constitution establishes the Court of Appeal, and also empowers Parliament to enact laws that stipulate the procedure for lodging appeals in the Court of Appeal:

"117.-(1) There shall be a Court of Appeal of the United Republic (to be referred to in short as "the Court of

Appeal") which shall have the jurisdiction of the Court of Appeal as provided in this Constitution or any other law.

...

(4) **A law enacted in accordance with the provisions of this Constitution by Parliament or by the House of Representatives of Zanzibar may make provisions stipulating procedure for lodging appeals in the Court of Appeal,** *the time and grounds for lodging the appeals, and the manner in which such appeals shall be dealt with.* "[Emphasis added]

Applying the principle of harmonious construction of statutes that are envisaged under Article 117 (4) of the Constitution, it seems to us that the opening statement in section 5 (1) of the AJA that—"except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal"—does not imply that the AJA is superior to, or controlling over, other provisions of the written laws like— section 14 (1) of the Basic Rights and Duties Enforcement Act, or section 5 of the AJA, or sections 47 and 48 of the Land Disputes Courts Act, or section 25 of the Tax Revenue Appeals Act, or section 17 (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act or section 57 of the LIA—

which in their own respective scopes, also provide for the right of appeal to the Court of Appeal. Where Parliament has not prescribed any condition regarding leave to appeal under a Statute, as it has not under section 57 of the LIA, this Court is not at liberty to uplift the condition of leave to appeal from section 5 (1) (c) of the AJA, and interpolate it into section 57.

Next, from the perspective that statutes governing appeals to the Court should be accorded a harmonious construction to ensure their co-existence, it is also appropriate to look more closely at the decisions of the Court which had concluded that leave to appeal is mandatory for appeals from the Labour Court.

The dispute that gave rise to the decision of the Court in **Zayumba Abedi Hussein A. Akida** (supra) commenced from the Commission for Mediation and Arbitration (hereinafter referred to as the **CMA**) and was later taken before the Labour Court as an application for revision. When the matter came before this Court by way of appeal from the Labour Court, it was resisted by a preliminary point of objection on the ground that the appellant had not obtained leave under section 5 (1) (c) of the AJA. We suppose, probably, the Court imported the requirement for leave because the Labour Court sat as first appellate court and the appeal before it was a

second appeal from the original decision of the CMA. The Court imported section 5 of the AJA to justify the striking out of the appeal for want of leave to appeal, stating:

"Without hesitation, we are in agreement with Mr. Msuya that the appeal is incompetent. Since it does not fall in any of the categories stipulated under Section 5(1) (a) and (b) of the above Act, it was imperative that leave be applied for under (c) thereof. In the absence of leave applied for and granted the appeal is incompetent. We accordingly strike it out with no order as to costs."[Emphasis added].

The case of **Hussein Shabenga Jumanne** (supra) was a labour dispute which also originated from the CMA. The Court sustained an objection and struck out that appeal for want of leave which the Court regarded as mandatory. The Court held that without leave obtained under paragraph (c) of section 5 (1), the Court lacked jurisdiction to hear the appeal. It is clear to us that like in **Zayumba Abedi**, the Court in **Hussein Shabenga Jumanne** considered section 5 (1) of the AJA but did not mention how this provision related to section 57 of the LIA which provides the statutory right of appeal from Labour Court. It remains a moot question

to us, whether the Court in **Zayumba Abedi** and also in **Hussein Shabenga Jumanne** (supra) would have reached different conclusions on the requirement of leave to appeal had they considered the provisions of Article 117 (4) of the Constitution which allows the legislature to enact written laws governing appeals to the Court.

The labour dispute which led to the decision of the Court in **Tanzania Breweries Limited v. Leo Kobelo** (supra) similarly originated from the CMA. At least this time the Court tangentially considered section 57 of the LIA when it stated— "*There is nothing in the Labour Institutions (Act No. 7 of 2004), the Labour Act, which provides anything to the contrary to what is laid down under sub-section (1) of section 5 of the Act.*" The Court then, on its own volition, held that appeals from Labour Court by way of section 57 of the LIA needed leave to appeal as provided for under section 5 (1) (c) of the AJA:

"...according to the Act [AJA], decisions made by the High Court, Labour Division are appealable under the provisions of paragraphs (c) of subsection (1) of section 5 unless there is another written law providing to the contrary.."

We think, under the principle of harmonious and independent co-existence of statutes governing appeals to this Court, our decisions in **Tanzania Breweries Limited v. Leo Kobelo** (supra), **Zayumba Abedi** (supra) and **Hussein Shabenga Jumanne** (supra) should not have interpolated the requirements for leave provided for in one independent Statute (i.e. the AJA) into another equally independent Statute (i.e. section 57 of the LIA). In the circumstance, we think that the resulting ratio from these three decisions of the Court imposing requirement of leave to appeal into section 57 of the LIA, lost much of their value as precedents. Where there are provisions of written laws like the LIA, which provide the right of appeal that is unfettered by the requirements for leave to appeal, the unfettered provisions should not be made subject of the requirement of leave under section 5 (1) (c) of the AJA.

In our recollection, one of the earliest decisions of the Court which acknowledges that appeals to the Court from Labour Court do not require leave to appeal was **Chama Cha Walimu Tanzania vs. The Attorney General**, Civil Application No. 151 of 2008 (unreported) where the Court stated in passing that section 57 of the Labour Institutions Act provides an automatic right of appeal to this Court.

In the Court's considered opinion, **Bulyanhulu Gold Mine (T) Ltd** (supra) has postulated the correct position of the law regarding the scope of section 57 of the LIA to the effect that leave to appeal is not necessary for appeals from the Labour Court. And, in arriving at this conclusion the Court, considered both section 5 (1) (c) of the AJA and section 57 of LIA, and in our view correctly observed that section 5 (1) does not override the statutory rights of appeal to the Court provided under other written laws. The Court rejected the attempt to interpolate the requirement for leave to appeal into section 57 of the LIA when it said:

"We are constrained to emphasize at this stage that a statute should not, in the absence of any express provision, be construed so that it deprives people of their accrued rights, and that in fact it is the duty of the court to give sensible meaning with a view of promoting the enjoyment of such rights instead of narrowing them down. In other words, we are duty bound to interpret the law accommodatively with a view of expanding its frontiers rather than narrowing frontiers, the purpose being to see to it that the procedure is reasonable, fair and just. That way, we think, we will have invested the provision with sound reasoning and content."

In recent times, the Full Bench of the Court had on two separate occasions underscored the importance of the plain meaning rule of statute interpretation. In **Chiriko Haruna David vs. Kangi Alphaxard Lugora and Two Others**, Civil Appeal No. 36 of 2012 (unreported), the Full Bench was looking at the plain meaning of the provisions of section 111 of the National Elections Act, Cap 343 (R.E. 2002) governing security for costs that was supposed to be paid by a petitioner in a parliamentary election, and stated:

"...We wish to observe here by way of emphasis, even if it is at the expense of repeating ourselves, that one of the cardinal rules of construction is that courts should give legislation its plain meaning."

Later in **Magambo J. Masato and Three Others vs. Ester Amos Bulaya and Two Others**, Civil Appeal No. 49 of 2016 (unreported) the Full Bench determined whether the plain meaning of the words of section 111 (1) (a) of Cap 343 (R.E. 2002) which provides for right to file election petitions can be read subject of other extraneous considerations. The Court

made the following observations regarding plain meaning rule of statute interpretation:

*"...In its plain language, section 111 (1) (a) of the Act shows that the intention of the legislature is to accord a 'person who lawfully voted or had a right to vote' **locus standi** free of any conditionality or interpolations. There is no room for the election petition court to interpolate or read into the section, the words that voters have to show how their rights or interests had been interfered with. If the Parliament in its enduring wisdom had so intended, it definitely would have so plainly stated, particularly after **the Mgonja** decision."*

In its plain language section 57 of the LIA itself clearly states *"any party to the proceedings in the Labour Court may appeal against the decision of that court to the Court of Appeal of Tanzania on a point of law only"*. With such clarity of language of section 57, there is no room for interpolations or reading-in anything, into this provision.

Having found that plain meaning of the language of section 57 of the LIA envisage no requirement for leave to appeal, henceforth, the debate whether the right of appeal to the Court under section 57 of the LIA is subject to obtaining leave to appeal under section 5 (1) (c) of the AJA should no longer take this, or any court's time. We found no rationale for the Court in some of its earlier decisions, to uplift the requirement of "leave to appeal" from section 5 (1) (c) and interpolate it into section 57.

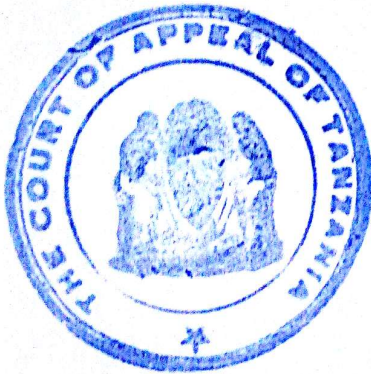
Along the same vein, we shall not countenance the attempt made by Mr. Kameya to stretch the plain meaning of the words "*on a point of law only*" which the Parliament has used under section 57 of the LIA, so as to include the right to appeal to the Court "*on matters of fact*" by resorting to the provisions of section 5(1) (c) of AJA. Since in its plain meaning section 57 has specifically restricted the right of appeal from Labour Court to point(s) of law only, so shall be it, and no court should clothe itself with the mandate to expand the right of appeal to include appeals on matters of fact as well.

It therefore follows that the decisions of the Court in **Zayumba Abedi Hussein A. Akida and Others v. Tanzania Ports Authority** (supra), **Hussein Shabenga Jumanne and 6 Others v. Tanzania Ports Authority** (supra), and **Tanzania Breweries Limited v. Leo Kobelo**

(supra) were incorrectly decided. By interpolating conditions of leave to appeal into the plain language the Parliament used under section 57 of the LIA, these decisions of the Court went beyond what is plainly provided for under section 57. These and other decisions of the Court which had erred in concluding that leave to appeal is mandatory for appeals from Labour Court under section 57 of the LIA shall henceforth be confined to their own respective facts.

For the avoidance of doubt, the right of appeal from Labour Court under section 57 of the LIA shall no longer be conditional or predicated in obtaining leave to appeal or certification of point of law by the High Court. It is so ordered.

DATED at DAR ES SALAAM this 31st day of May, 2017.



I. H. JUMA
ACTING CHIEF JUSTICE

S. MJASIRI
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

R. E. MZIRAY
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

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

A handwritten signature in blue ink, appearing to read "J. R. Kahyoza", is written over a horizontal line.

J. R. Kahyoza
REGISTRAR
COURT OF APPEAL

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

TANZANIA TEACHERS UNION.....APPELLANT
VERSUS

1. THE CHIEF SECRETARY.....1st RESPONDENT
2. HON. MINISTER, PRESIDENT'S OFFICE
PUBLIC SERVICE MANAGEMENT.....2nd RESPONDENT
3. GENERAL (sic) PERMANENT SECRETARY
MINISTER OF EDUCATION & VOCATIONAL TRAINING.....3rd RESPONDENT
4. ATTORNEY GENERAL.....4th RESPONDENT

(Appeal from the Ruling and Order of the High Court of Tanzania
Labour Division)

(Wambura, J.)

Dated the 2nd day of August, 2012
In
Misc. Application No. 96 of 2012

ORDER

In Court this 5th day of June, 2017

Before: The Honourable Mr. Justice, I. H. Juma, Acting Chief Justice,
The Honourable Madam S. Mjasiri, Justice of Appeal,
The Honourable Mr. Justice A. G. Mwarija, Justice of Appeal,
The Honourable Mr. Justice R. E. Mziray, Justice of Appeal
And; The Honourable Madam Justice R. K. Mruye, Justice of Appeal
.....

THIS APPEAL coming on for hearing this 28th day of April, 2017, in the presence of Mr. Gabriel Simon Mnye, learned Advocate for the appellant and Mr. Obadijah Kameya, learned Principal State Attorney, who was assisted by Mr. Paul Shaidi, learned Senior State Attorney, Ms. Ellen Rwigye, learned Senior State Attorney and Mr. Hangi Chang'a, learned State Attorney for the respondents AND UPON HEARING; both parties, when the appeal was stood over for Ruling and this appeal coming for Ruling this day;

IT IS ORDERED THAT, decisions of the Court which had erred in concluding that leave to appeal is mandatory for appeals from Labour Court under section 57 of the LIA shall henceforth be confined to their own respective facts.

IT IS FURTHER ORDERED THAT, the right of appeal from Labour Court under section 57 of the LIA shall no longer be conditional or predicated in obtaining leave to appeal or certification of point of law by the High Court.



DATED at DAR ES SALAAM this 5th day of June, 2016.

J. R. Kahyoza
REGISTRAR
COURT OF APPEAL

Extracted on 5th day of June, 2016