

IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM

MISC. CIVIL CASE NO. 118 OF 1995

TWALIB M. MARZUKU & 3 OTHERS.....APPLICANTS

VERSUS

NATIONAL PROVIDENT FUND .....RESPONDENT

RULING

KAJI, J.

This is an application by the applicants (1) TWALIB M. MARZUKU (2) JOSEPH MWANTANDE (3) M. NJIGE and (4) EUPHRASIA NJAU for an order that this court may revise the Dar es Salaam Resident Magistrate's proceedings made on 29/5/95 dismissing the applicants' chamber application and the main suit. It has been made under section 44 (1) (b) of the Magistrates Courts Act, 1984.

It is in the record that the applicants were former employees of the respondent the NATIONAL PROVIDENT FUND in the Managerial positions whose services were terminated and declared redundant in October 1994.

According to para 4 of the plaint it is averred that they were dissatisfied with that termination and so they initiated proceedings towards bringing up the matter in the Industrial Court of Tanzania.

Realizing that the respondent was in the process of removing them from the houses which were allocated to them on the basis of service tenancy they rushed to Kisumu Resident Magistrates Court on 6/2/95 where they filed a suit for the following reliefs

1. An injunction order restraining the respondent, its agent or workmen from evicting them from the premises they were occupying or removing any furniture from the said premises.

.....2/.

2. An injunction order restraining the respondent, its agents or workmen from employing new employees and or filling the posts left vacant by the applicants till the determination of the Trade Dispute.
3. Costs and any other reliefs the Court could deem fit and just.

In reply the respondent challenged the jurisdiction of the Court.

While the main suit was still pending the applicants filed an application on 15/2/95 for an interlocutory injunction order calling upon the court to restrain the respondent from evicting them from the premises they occupied and or removing the furniture therein pending determination of the main suit or the Trade Dispute before the industrial Court.

That application was set down for hearing on 4/5/95.

But on that day (ie 4/5/95) neither the applicants nor their advocate were present. That application was accordingly dismissed for non-appearance of the applicants or their advocate.

After the dismissal of that application the main suit was fixed for hearing on 29/5/95.

But on 16/5/95 the applicants filed an application for ~~xxxxxx~~ setting aside the dismissal order. The same was also set down for hearing on 29/5/95 when the main suit would also be heard

On 29/5/95 the applicants and their advocate were absent without notice or leave by the Court. Both the main suit and the application were dismissed for non-appearance of the applicants and or their advocate.

On 16/6/95 the applicants filed an application for setting aside the dismissal order of their application to set aside the dismissal order of 4/5/95.

The respondent resisted the application on the ground that since the main suit was dismissed on 29/5/95, an application for an interlocutory order would not stand as interlocutory order are normally made where there is already a main suit. This argument satisfied the trial court which dismissed the application on 26/9/95.

On 4/11/95 the applicants through their advocate Mr. Kashu-mbugu filed this application which was vehemently resisted by the respondent on the ground that no reasonable cause has been shown by the applicants or their advocate for their absence on the dates when the dismissal orders were made.

At this stage I hesitate to say that I will not discuss the merits or demerits of this application because it is time barred. The order complained of was passed on 29/5/95. The applicants sat on their right until on 4/11/95 when they woke up and filed this application.

This application is for revision under section 44 (1)(b) of the Magistrates Courts Act 1984. Under that provision of the law no time limit is specified. The guiding instrument therefore is the Law of limitation Act No. 10 of 1971. The relevant provision is para 21 part 3 of the First schedule.

Under that para the time limit is sixty days (60).


From 29/5/95 when the order complained of was made till 4/11/95 when this application was filed is more than five months. The applicants ought to have applied for and be granted leave to lodge this application out of time. They did do so and no leave was granted by this court to file their application out of time. This application is therefore not properly before this Court. It is time barred. It is hereby struck out with costs.

S.N. KAJI

JUDGE

4/4/1997.

Court: Ruling has been delivered in the presence of Mr. Kashurbugu learned counsel for the applicants and Mrs. Drio learned counsel for the respondent this 4th day of April, 1997.

  
S.N. KAJI  
JUDGE.

4/4/1997