

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL REVISION 37 OF 2003

C. G. JENSEN A/S APPLICANT

Versus

HAMISI OMARY CHAGILE RESPONDENT

R U L I N G

LUANDA, J:

This is a revisional application. The application has been made under S. 44 (1) of the Magistrate Courts Act, 1984, and / or S.79 and S. 95 of the Civil Procedure Code, 1966.

I have carefully read the record of the trial court. What caused the filing of this application is the decision of the trial court dated 20/7/99 and its ^{subsequent} decisions. I will attempt to explain.

In the Resident Magistrates' Court of D'Salaam sitting at Kisutu, Hamis Omary Chagile (hereinafter referred to as the Respondent) filed a suit against C.G.Jensen A/S (hereinafter referred to as the Applicant) claiming a sum of Tshs. 3,899,075/= alleging to be his terminal benefits. The Applicant filed their WSD through a law firm called Tenga N.L.& Partners (Adreates).

In the WSD the Applicant raised two preliminary objection on the questions of competency of the trial court and the issue of time in that the suit was time barred. Parties were directed to file written submissions. Both parties filed their written submissions. The Applicant filed through Mr. Kugesha, learned advocate. The Respondent filed his personally. A ruling was written and delivered. The trial Magistrate (Ms Mbise - RM) uphold the 1st ground and dismissed the entire case.

She said this, I quote:-

" In the circumstances, the first ground of preliminary objection is upheld. Since this court doesnot have the required jurisdiction to entertain the suit I will not deal with the second ground of objection. This suit is therefore dismissed for lack of jurisdiction."

The ruling (~~under appeal~~) was delivered on 20/7/99. But there is an order to the effect that the case to come for mediation on 19/8/99

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What a procedure? Let me reproduce the entry of the court for case reference:

20/7/99:

Coram : E.G.Mbise

Plaintiff: Present in Person

Defendant: Mr. Kugesha.

COURT - Ruling delivered this 20/7/99 in the presence of the plaintiff in person and in the presence of Mr. Kugesha advocate for the defendant.

E.G.Mbise

Signed.

MR. KUGESHA:- We pray to try to settle the matter by mediation.

ORDER : Mediation hearing on 19/8/99.

E.G.Mbise

SIGNED

20/7/99"

On 19/8/99 Mr. Mbuya Resident magistrate presided over the case. Mr. Mudemba, learned counsel appeared for the Applicant and he reiterated his colleague position in that the court had no jurisdiction. The presiding learned magistrate said, I quote:-

" Court: The same issue relating to jurisdiction was handled by my colleague Mrs Mbise RM on 16/7/99. She was satisfied that the court has ample powers of handling this suit. If the deft was ~~carried~~ the ~~motion~~ was open for him to appeal against the order.

MR. MUNDEBA: I wish to appeal to the High Court so the issue of jurisdiction of this court be tested before we proceed.

Court: The prayer is hereby granted.

Order : Mediation is hereby adjourned sine die pending the outcome of appeal.

Mbuya,

(underscoring mine)

Signed

19/8/1997."

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But where did he get that, Mr. Mbuya knows. Be that as it may, it would appear no appeal was lodged. On 6/12/2000 in the presence of the Respondent, the case was fixed to come for mediation on 25/1/2002 and notice was to issue to the Applicant.

On 25/1/2001 the Applicant were absent, the Respondent was present. The case was adjourned till on 23/2/2001. And on 23/2/2001 Mr. Kabakama learned counsel for the Applicant from a Law firm known as IMMA & Co. Advocates, appeared. Mr. Kabakama prayed for time to check the record. He was granted. And when the case came up he explained the status of the case and the way it was mishandled. Mr. Kabakama attempted to expunge from the record proceedings after the decision of 20/7/99 by way of review but to no avail. Meanwhile the Respondent applied for execution of the decree. Mr. Kabakama filed an application for stay of execution. The same was dismissed without being heard, hence this application.

Mr. Kalunga learned counsel who appeared for the Respondent in this application raised an objection in that the application for revision is time barred. Mr. Kalunga argued with force saying time started to run from the date of the decision there of ie 20/7/99. The application ought to be made within 60 days ie latest by 20/9/99. This application was filed on 3/4/2003 vide ERV 18173165.

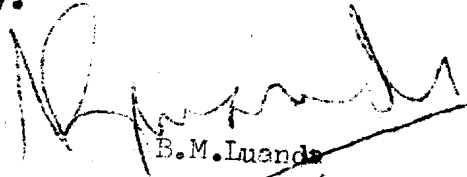
Mr. Kabakama on the otherhand said he was in time. He relied inter alia, S.19 (1) of the Law of Limitation, 1971 in that time for awaiting proceedings should be excluded. But he didnot say when he got the proceedings. In any case attaching a copy of proceedings is not a condition precedent in filing revisional proceedings. One can even move the court in revisional proceeding even by a letter.

Mr. Kalunga's argument sound attractive, but I am afraid to say it is erroneous. The record is very clear that court proceedings were terminated. on 20/7/1999. Whatever followed thereafter is a nullity and of no legal effect. I am of the settled mind that time cannot start to run from a decision which in the first place ought not to be entered. Time cannot start to run from decision which is a nullity. A party who is satisfied with that " decision" may apply for revisional, not with standing the time in making such application has elapsed.

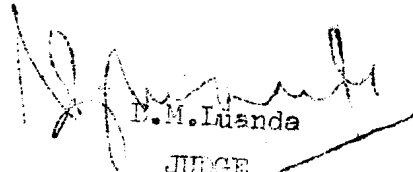
Exercising revisional powers of this court, I quash the proceedings from the order of mediation dated 20/7/99 and all proceedings followed thereafter. And the same are hereby expunged from the record. The decision of the trial court of 20/7/99 dismissing the suit for lack of jurisdiction stands.

The same is allowed with costs.

Order accordingly.


B.M. Luanda
JUDGE
9/6/2003

Ruling delivered. Mr. Kalunga for the Respondent Applicant
Absent.


B.M. Luanda
JUDGE
9/06/2003