

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

**MISC. CIVIL APPLICATION NO.14 OF 2001**

**JAMPION AZIKARA..... APPLICANT**

**VERSUS**

|   |   |                    |
|---|---|--------------------|
| <b>1. MINISTER FOR LABOUR</b>           | } | <b>RESPONDENTS</b> |
| <b>2. THE HON ATTORNEY GENERAL</b>      |   |                    |
| <b>3. ATANZANIA ELEXTRIC SUPPLY CO.</b> |   |                    |

|                            |                   |
|----------------------------|-------------------|
| <b>Date of last order:</b> | <b>12/4/2006</b>  |
| <b>Date of Ruling:</b>     | <b>26/10/2006</b> |

**RULING**

**MANENTO, JK:**

The applicant had filed an application before this court for leave to apply for prerogative orders of certiorari and mandamus. The same had been granted. Then the second step was for the filing of the application itself for the prerogative orders. After filing the application it was ordered that the same be argued by way of written submissions. It was agreed and the Schedule in which the written submissions could be filed was fixed by the court. The date for the ruling was set as 29/7/2004. The learned counsel for the applicant did not file his written submissions. Unfortunately, the ruling was not delivered on the date it was ordered. Instead, it was delivered

on 27/8/2004 in the absence of the parties. The application for prerogative orders were then dismissed.

The applicant being aggrieved by the dismissal of his application, he filed this chamber summons under Order XLIII r.2, order IX r.9 and section 95 of the Civil Procedure Code, 1966. The orders sought were that:

1. That the court be pleased to set aside the order dismissing this suit dated 27/8/2004 and appoint another date for proceeding of the hearing of the same.
2. Costs and any other reliefs.

The chamber summons is supported by an affidavit of the applicant, Jampion Azikara.

Having been served with the chamber summons, the Attorney General gave a notice of preliminary objection on point of law in that:

The application is incompetent before the Court for being time barred as it contravenes the provisions of the Law of Limitation Act item 2 of Part III of the Schedule.

The preliminary objection was ordered to be argued by way of written submissions on a Schedule set out by the court. The Attorney General filed its written submissions on 20/4/2006 four days before the last date, which was set as 28/4/2006. The learned counsel for the applicant was to file his

written submissions at latest on 15/5/2006. On 15<sup>th</sup> May, the learned counsel for the applicant wrote to this Court that they could not file the written submissions because they had not been served by the Attorney General.

Before I proceed, I would like to point out that the 3<sup>rd</sup> respondent, Tanzania Electric Supply Company had also raised a preliminary objection on point of law in that the application was filed out of time. However, it is not sure whether they knew of the lat order of this Court or not. That is because they were absent when the order was made.

The preliminary objection raised by both the Attorney General and the 3<sup>rd</sup> respondent was on point of law.

The Attorney General submitted that the Chamber summons was filed after the time of limitation as the ruling was delivered on 27/8/2004. It was correctly submitted that an application ought to have been filed within 30 days from the date of the ruling/judgment when the petition was dismissed, which was on 27/8/2004. Infact, counting from that date, the application was filed 28 days after the days allowed in law so to file such an application. It is true that the time allowed for an application to set aside an award is thirty days as per Law of Limitation Act, (Cap 89 R.E. 2002) part III second item.

The learned state attorney submitted that the fact that the application was filed after 30 days prescribed by law, then the remedy available to the applicant was to apply for an extension of time, giving reasons for the delay before he could file this application for setting aside the dismissal order. The learned state attorney submitted further that the point of limitation has to be considered even if it was not pleaded. He cited the case of **Stephen Mapunda (minor) V. Shirika la Usafiri Dar es Salaam & Amo** (1982) TLR 258.

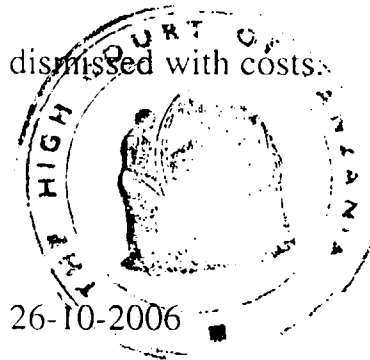
As I pointed out earlier, the respondent's were not served with the written submission of the applicants, so that, they had nothing to reply. That could be right if the issue raised was on a point of fact and law. In this case, it is a point of law, which could even be raised by the Court itself *Suo Motto* as it doesn't necessarily require the parties to plead it as per decision of this court cited above by the learned State Attorney.

It is obvious that the chamber summons was filed after the expiration of the 30 days allowed by the Law of Limitation. That is clear by every one, just using simple arithmetic incounting. The dismissal was made on 27/8/2004 and this application was filed on 25/10/2004 and this application was filed on 25/10/2004 about 58 days from the date of the dismissal order. The procedure to clear that obstacle was no more than filing an application

for extension of time, whereby the applicant could give reasons for the delay for consideration by the Court. If the Court allows the extension of time for reasons to be given, then an application like this one would be filed and considered on its own merits.

The learned counsel for the applicant seemed not to have bothered to check with the High Court Registry to ascertain whether the Attorney General had filed their written submissions or not. The written submission of the Attorney General were filed four days before the last day ordered, so that, had the applicant or his counsel bothered to find out, they would have collected their copy. All the same, that is not the basis of my ruling, which is entirely based on law and not on facts.

Having said so, I agree with the objectors that the application is incompetently filed before this court due to the law of Limitation and in the absence of a grant for extension of time. The application is accordingly dismissed with costs.



  
A.R. Manento

**JAJI KIONGOZI**

Coram: Rwakibarila, SDR-HC

For the Applicant

For the 1<sup>st</sup> Respondent – Present

For the 2<sup>nd</sup> Respondent)

For the 3<sup>rd</sup> Respondent) Mr. Ngwembe PSA

Cc: Livanga.

Court: Ruling delivered this 26<sup>th</sup> day of October, 2006 and right to appeal in time has been explained thoroughly.

**G.K. Rwakibarila**

**SENIOR DEPUTY REGISTRAR-HIGH COURT**

**26-10-2006**