

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

DISTRICT REGISTRY AT DAR ES SALAAM

CIVIL REVISION NO. 44 OF 2016

ABDILLAH MIKIDADIAPPLICANT

VERSUS

MOHAMED ENTERPRISES RESPONDENT

7/5/2018& 10/5/2018

RULING

I.P.KITUSI,J.

Abdallah Mikidadi, the present applicant was an employee of Mohamed Enterprises (T) Limited, the respondent before the two got involved in a dispute that was finalized by the Minister of Labour, vide an order dated 28/4/2004. This order by the Minister of Labor became a subject of protracted litigations in court, with the applicant on the one hand involving "*the court*" to execute the order, and the respondent raising objections on the other. The background is best told by referring to some salient events in the proceedings of the case.

On 21 July 2004 the applicant obtained a garnishee order against bank accounts of the respondents. This was before the Resident Magistrates' court of Dar es Salaam at Kinondoni. The respondent's application to set aside that order was dismissed by the same court on 27 September 2004. By 24th May 2005 the gainsheet order had not been complied with whereupon it was ordered that the order be complied with. On 26 May 2005 the respondent made another application meant to have the execution of the order stayed, however

they withdrew it on 12th July 2005 because the High Court had ordered stay of the execution.

On 7th March 2006 applicant successfully prayed for execution to continue, but on 20th March 2006 the respondent informed the court that the High court had been presented with an application for orders of certiorari and had ordered stay of execution.

On 7th June 2006 the executing court noted that there was, indeed, a Misc. Civil cause No. 123 of 2004 before the High court in which a stay of execution had been ordered. However on 27 March 2007 the High Court dismissed the application for orders of Certiorari, so there was nothing pending before it.

This seek and hide game went on up until when the respondent raised the issue of jurisdiction of the executing Court to handle the matter. On 19 December 2014 that application by the respondent was dismissed for want of prosecution. An application to vacate the dismissal order was immediately filed requesting for a date to be fixed for hearing of the application.

The parties made oral submissions through counsel, Dr. Lamwai learned advocate represented the present respondent who was the applicant, whereas Mr. Kadago learned advocate represented the present applicant, who was the respondent. It was Dr. Lamwai's main argument that on the day the application or objection proceeding had been dismissed his appearance had been prevented by sufficient cause in that he was appearing before Mwanja, J(as he then was). For

the then respondent, Mr. Kadago resisted the prayer for restoration of the proceedings.

In its ruling the learned Resident Magistrate concluded that the District court of Kinondoni had no jurisdiction to execute a decree issued by the Ilala District Labour Conciliation Board. This decision aggrieved the applicant who has preferred an application for revision under section 44(i) (b) of the " Resident Magistrates Courts Act, Cap 11 R.E. 2002. The application seeks the court to call for the record in the Resident Magistrates Court of Dar es Salaam at Kivukoni Kinondoni Misc. Civil Application No.54 of 2004 and examine whether it was proper for the District Court of Kinondoni at Kinondoni to usurp jurisdiction in that matter.

This application, by an order of this court, was prosecuted by way of written submissions, during which each of the parties raised some points which I want to deal with immediately before I address other substantive issues. These are that the application wrongly cites the enabling provisions as being a Resident Magistrate s' Courts Act which is non-existent, a point raised by the respondent. On the other hand the applicant raised a point with regard to the respondent's reference to this court as the High Court of the United Republic of Tanzania which is not a creature of the Constitution.

With respect both points are valid in that there is nothing like the Resident Magistrates' Courts Act Cap II in our laws but as correctly submitted by the applicant it should be taken that his intention was to refer to Cap11 of the laws which is the Magistrates' Courts Act. Similarly the Constitution Art. Article 107B Creates the High Court of

Tanzania, so reference to the High Court of the United Republic of Tanzania is erroneous. My conclusion however is that this is a technical error or slip which under the same constitution Article 107 should not deter this court from considering substantial justice of the case.

Next for consideration before addressing the substance of the application, is the issue of whether the application has been made within the prescribed time. This point has been raised by the respondents in their submissions alleging that under item 21 of Part III to the Schedule of the Law of Limitation Act Cap 89 the application ought to have been filed within sixty (60) days. However, it is submitted, this application seeking to challenge the decision dated 8th September, 2016 was filed more than 90 days later, on 14 December 2016. It has further been submitted that although the application for Revision had earlier been filed and subsequently withdrawn the filing of the fresh application did not affect the Law of Limitation. For this, the provision of Order XXIII Rule 2 of the CPC has been cited. The court has been invited to dismiss the application under to dismiss the section 3 of the Law of Limitation Act Cap 89 by taking inspiration from Order XXIII Rule 2 of the CPC which applies to suits.

In response to this point the applicant has submitted that these are execution proceedings that are exempted from the application of Order XXIII Rule 2 of the CPC. He cited Rule 4 of that order which states that the provisions of Order XXIII shall not apply to execution proceedings.

There is no dispute that prior to this application, the applicant had filed an application for revision which was withdrawn at his instance.

The question is whether in the present application he is bound by the law of Limitation as contended by the respondent or he is not so bound as maintained by the applicant.

My decision on this point must be informed by the fact that the present application has been filed under section 44(1) (b) of the Magistrates' Courts Act 1984, Cap 11. The Magistrates' Courts Act does not provide for a situation where a suit or application is being filed after withdrawal of the former and whether the subsequent suit or application is affected by the Law of Limitation. It is on that basis, I think, that the respondent cited order XXIII of the CPC for inspirational purpose.

A closer and more relevant issue is, therefore, whether a fresh application for revision made under section 44 (i) (b) of the Magistrates' Courts Act, Cap II is protected by Rule 4 of order XXIII of the CPC therefore not affected by the Law of Limitation Act.

Certainly the parties will appreciate the fact that neither before the court below nor before the court has the Civil Procedure Code been applied, therefore Rule 4 of order XXIII of the code cannot be brought into play. The reason that provision was cited by the respondent as earlier observed, was for the purpose of drawing inspiration. The application has been made under the Magistrates Courts Act, and the question is whether it has been filed within time.

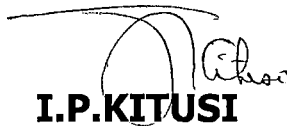
Section 44(1) (b) of the Magistrates' Courts Act Cap II does not provide the time limit within which an application for revision may be made. Under item 21 of the Law of Limitation Act, cap 89, the time limit for applications whose period of presentation is not provided for

under the Civil Procedure Code or the Magistrates' Courts Act is sixty days.

The law provides a time schedule for the taking of some essential steps in litigation and that is the essence of the Law of Limitation Act, cap 89 whose preamble reads;

"An Act to prescribe the law for the limitation of actions in civil proceedings and for related matters"

In the instant application the applicant has violated that law under item 21 of Part III of the Schedule to the Law of Limitation Act, Cap 89. This application having been filed beyond the 60 days prescribed by the law is time barred and is accordingly dismissed, and it makes it unnecessary to consider its merits. It being originally a Labour matter, I make no orders as to costs.



I.P.KITUSI

JUDGE

10/5/2018