

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL APPEAL NO. 123 OF 2019

*(Originating from the Ruling and Drawn Order of Misc. Civil application No. 12 of 2009
at the District Court of Temeke delivered on 19/06/2019 by Hon. Kihawa-RM)*

ZULEIA KATUNZI AND OTHERS.....APPELLANT

VERSUS

TANZANIA PORTS/HOBOURS AUTHORITY.....RESPONDENT

JUDGEMENT

Last order date: 28/04/2020

Date of Judgement: 17/07/2020

MLYAMBINA, J.

This is one of the hopeless appeals before this court of record. Both parties in the appeal do not dispute on the following important facts: **One**, Zuleia Athumani Katunzi the deceased died on 23rd October, 2002. **Two**, Juma Issa Mkuchika was appointed the administrator of the estate of the late Zuleia Athumani Katunzi. **Three**, the late Johnson M. Kihoko died on 7th June, 1999. **Four**, Mboni said was appointed the probate administrator of the estate of the late Johnson M. Kihoko. **Five**, on 12th December, 1997 the Temeke Conciliatory Board issued a verdict in favour of theafore stated deceased persons. **Six**, the decree holders never filed

execution proceedings in their life time. **Seven**, the application for execution was filed on 6th February, 2018 before the Temeke District Court at Temeke **Eight**, the application for execution was filed in the name of the deceased persons by the probate administrator and signed by the probate administrator without indicating his/their capacities. **Nine**, the execution proceedings faced the *plea in limine litis* to the effect that: the application was not executable, time barred and it was defective. **Ten**, all the three objections were upheld by the district Court of Temeke at Temeke. Hence this appeal on four grounds, namely:

- 1) That, Honorable Kihawa RM erred in law and fact when she stated that the administrator had to appear in the application for execution to sue on behalf of deceased.
- 2) That, Honorable Kihawa RM erred in law and fact when she stated that the execution of award of conciliation board of Temeke ought to have been executed within 12 years.
- 3) That, Hon. Kihawa RM erred in law and in fact when she stated that the appellants had to file an application for execution under the provisions of current established labour court governed labour court governed by *Section 13 (2) of The Written Laws (Miscellaneous Amendments) No. 2 of 2010.*

4) That, Honorable Kihawa- RM erred in law and in fact when she held that since the matter was not prior filed in the District Court of Temeke, then that court lacks jurisdiction to entertain the same.

WHEREOF, the appellant prayed for judgement and decree as follows:

- i) That, this appeal be allowed.
- ii) That, the ruling and drawn order of the District Court of Temeke be quashed and set aside.
- iii) That, an order for execution of the award of conciliation Board of Temeke be granted.
- iv) That, costs of this case be paid.
- v) That, this honorable court be pleased to grant any other relief it deems proper and just.

The appeal was argued by way of written submissions. The appellant enjoyed the Legal Service of Samson Russumo, Advocate. The respondent was served by Leonard v. Mpemba Advocate.

Let me start with the *locus standi* of the appellants. In wrong view of the appellants, if the late passed away after issuance of the decree, it is not proper to replace the late with the administrator.

Also, in wrong view of the appellants, as long as the copy of letter administration is annexed, that is proper and acceptable. The appellants maintained that it is not necessary to replace the late who is in the decree/award and put the name of the administrator. The respondent on its part was of reply submission that, the administrator has powers to step on the shoes of the deceased in every aspect, in credit and facilities, to sue and be sued too, like the deceased himself. Thus, in this aspect, if the administrator appears in such capacity, he has to appear in the document filed. The administrator cannot state only the names of the deceased while he does not exist. Thus, this is what gives the opponent, with power to take any legal actions against the administrator.

As constructed by the respondent, the application on behalf of the deceased applicant by the probate administrator must reflect so. It is not a matter of putting the name of the deceased as the applicant. Such mechanical action has no force of law. Indeed, it is not a mere action of signing on behalf of the deceased while the applicant reads the deceased. The impression we get is that the applicant has resurrected and came to file execution proceedings. That has never happened except for Jesus Christ in Christian belief. Thus, such, the application in this case ought to read:

Juma Issa Mkuchika (as an administrator of the estates of the late Zuleia Katunzi).....Applicant

That is why, Section 5 of the 5th schedule to Magistrates Courts Act (R.E.2019) requires the administrator appointed by the court to represent the estate of the deceased person. The same requirement is reflected in *Section 41 (2) of the Civil Procedure Code Cap (33 R.E 2019)* which provides:

Where a judgement debtor dies before the decree has been fully certified, the holder of the decree may apply to the court which *passed it to execute the same against the legal representative of the deceased.* [Emphasis applied.]

Besides, the provision of *Section 100 of the Probate and Administration of Estates Act Cap 352 (R.E 2019)* empowers the executor and the probate administrator to sue or be sued in respect of causes of action serving the deceased. Section 100 (*supra*) provides:

An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death as the deceased had when living:

In view of the above position of the law; the administrators have to appear to sue on behalf of the deceased whom they represent. Failure of it, as properly argued by the respondent the application remains incompetent.

Coming to the time limitation point, it must be understood that there is no decree/ award which can be executed at any time without considering the effluxion of time. So, it does with causes of action. As conceded by both parties, the decree/award sought to be executed was given in 1999. The application for execution was filed more than 19 years later.

In arguing the second ground of appeal, the appellants advanced three points: **First**, the labour law which governs this case is *Security of Employment Act of 1964*. If one reads the law of *Security of Employment Act 1964*, there is no any provision of that law which fixes the time limit to sue before or after lapse of 12 years. In view of the appellant, the *Civil Procedure Code Cap 33* was not applicable at all to labour matters. **Second**, *section 4 (2) of the Civil Procedure Code Cap 33* was not applicable at all wherever the *Security of Employment Act of 1964* was the governing and applicable law. **Third**, the appellants were not

aware of the existence of the award in favour of the deceased person.

The respondent on its part has replied that the Law of Limitation Act cuts across in all matters. That, one may not avoid the fact that execution ought to have been executed within 12 years from when the administrator came into knowledge of the award.

With due respect to both parties, the limitation periods are governed by the *Limitation Act, 1971 cap (R.E. 2019)*. The limitation period, as per the law of Limitation Act (*supra*) varies depending on the type of claim, for example, claims to enforce a judgement is 12 years, claims by or on behalf of the government is 60 years, breach of contract or trust is six years, claims for equitable relief with no other prescribed limitation is six years, claims to recover arrears or trust property is six years, tort actions- three years and claims for recovery of land is 12 years and for all claims which the law does not provide a specific limitation period are time barred after six years.

It is the further findings of this court that non awareness of the award is not an exception to the limitation period. The fact that the appellants stayed idle for about 19- or 20-years ought of the 12

years limitation period, they cannot come to enforce it. Granting the same application could be going beyond its jurisdiction.

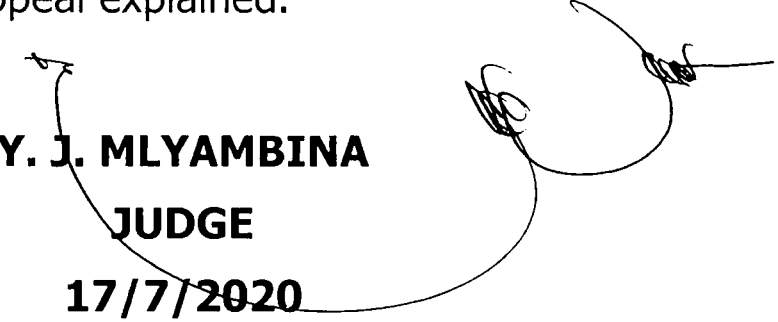
I find no need to go into a detailed analysis of the 3rd and 4th grounds of appeal because the execution of the award is time barred. Neither normal courts nor labour courts can entertain execution of the award issued beyond 12 years. It is time barred on the face of it.

In the end, the appeal is hereby marked dismissed with costs for lack of merits. Order accordingly.



Y. J. MLYAMBINA
JUDGE
17/7/2020

Judgement pronounced and dated 17th July, 2020 in the presence of the appellants in person and Counsel Leonard Mpemba for the respondent. Right of Appeal explained.



Y. J. MLYAMBINA
JUDGE
17/7/2020