

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE DISTRICT REGISTRY]**

AT ARUSHA

MISCELLANEOUS LABOUR APPLICATION NO. 45 OF 2018

(C/F CMA/ARS/ARB/40/2015)

ATHUMAN KOISENGE.....1ST APPLICANT
ANDREW NGASARA.....2ND APPLICANT
DAVID KIJAZI.....3RD APPLICANT
RAMADHAN MHINA.....4TH APPLICANT
RENATUS ISHEMO.....5TH APPLICANT
FRANK MOLLEL.....6TH APPLICANT
NOELA SARA KIKYA.....7TH APPLICANT
MWAKISALA BAKARI.....8TH APPLICANT
EDWIN KAKOMELA.....9TH APPLICANT
PAUL MOLLEL.....10TH APPLICANT

Versus

M/S RANGER SAFARIS LTDRESPONDENT

RULING

27/08/2020 & 22/10/2020

MZUNA, J.:

The above mentioned applicants are seeking for leave to file representative suit against the respondent. It is supported by an affidavit sworn by Ibrahim Suleiman Killo, their Personal Representative, as well as that of Andrew Ngasara, the 2nd applicant whom they request to be appointed so as to

represent them in a representative suit. The respondent enjoyed the service of Ms. Neema Mtayangulwa, learned counsel from Star Attorneys. Hearing proceeded by way of written submissions.

As a matter of fact, the applicants were retrenched by the respondent, their erstwhile employer sometimes on 10th April, 2010. The Commission for Mediation and Arbitration of Arusha (hereafter the CMA) dismissed their application. Subsequently thereafter, they filed a revision application before this court vides Labour Revision No. 44 of 2016, which however, did not proceed to its finality following a preliminary point of objection raised by the respondent's counsel that the revision application was incompetent for being brought without leave of the court for a representative suit. Consequently, the court on 24th May, 2017, struck out the application. The applicants were however granted thirty (30) days leave to re-file a proper application in accordance with the law.

Unfortunately, the applicants were late for two days in filing a new application. The court, (Maige, J.), upheld the preliminary objection on time bar raised by the respondent in Miscellaneous Labour Application No. 43 of 2017. In its ruling delivered on 19th November, 2018, the court directed the applicants to file an omnibus application for extension of time and

substituted application within fourteen (14) days. Following this, the applicants on 30th November, 2018, filed this application seeking leave to file a representative suit against the respondent.

The questions for determination are:-

- 1. Whether the application has been brought with leave to file it out of time as per the order of the court made on 19th November, 2018 (Maige, J).*
- 2. If not, what are the consequences?*

In the first place, Mr. Killo for the applicants admits that they were ordered to file an omnibus application seeking for application for extension of time to file leave for a representative suit as well as an application for leave to file representative suit in revision. That they failed to comply with the court order due to confusion with the order of the court. He however, requested the court to grant extension of time in the submissions. It is almost the same scenario which was made in Miscellaneous Labour Application No. 43 of 2017, the prayer which was refused for the ground that an application for extension has to be formally made.

In reply, Ms. Mtayangulwa submitted that this application is brought in contravention of the order of this court made on 19th November, 2018. She asked for this court to dismiss this application, citing the case of **Micky Giled**

Ndetura (a minor suing through Gilead Ndetura Lembai (Next friend) vs. Exim Bank (T) Limited, Commercial case no. 4 of 2014, High court Commercial Division) at Arusha (unreported) which cited with approval the case of **Breweries Limited vs. Edson Dhobe & 19 Others**, Misc. Civil Application No. 96 of 2000, High court Dar es Salaam registry (unreported). She insisted that court orders should be respected and complied with for a firm control over proceedings.

In their rejoinder submissions, the applicants insisted that they misunderstood the court order of 19/11/2018. They asked for the court to exercise its discretionary powers and grant their prayer.

On the question whether the applicants have complied with the court order, the answer is No. The present application for leave to file a representative suit is without seeking leave to enlarge time to bring it out of time. They purport to make such prayer for extension of time through their submissions instead of a formal application in the chamber summons to move the court stating the law, something which is illegal. Submissions cannot be used to move the court. It was held in the case of **TUICO at Mbeya Cement Compay Ltd v. Mbeya Cement Company Ltd & Another** [2005] TLR 41 that:

"It is now settled that a submission is a summary of arguments..."

In other words, prayer for extension of time cannot be done through submissions which is only summary of arguments.

In the rejoinder submission, the applicant's personal representative says all this is attributed to the reasons that he is ignorant of the law so he misunderstood the order of the court issued on 19th November, 2018. He therefore asked for extension of time to bring a representative suit. The respondent's counsel argued that this matter has been struck out twice. This has caused unnecessary costs on the respondent who has to hire advocates for each application. I understood her that there is a prejudice which they are likely to suffer.

I should respond to the argument that the applicant's representative is a lay person. This argument is unassailable because ignorance of the law is not a defence. There are situations where error of their representative cannot be used to punish the innocent applicants, however this case does not fall in that category. It was held in the case of **Umoja Garage vs National Bank of Commerce** [1997] TLR 109 (CA) at page 113 that:-

"...It seems plain to me that in the instant case lack of diligence on the part of counsel, or an oversight as Mr Lukwaro

*calls it, **would be even more devoid of merit** as a plea for the extension of time. In the result, therefore, I am of the view that no sufficient cause has been disclosed for enlarging the time as prayed..."*

(Emphasis supplied)

This application I dare say, was brought without exercise of diligence and not in good faith.

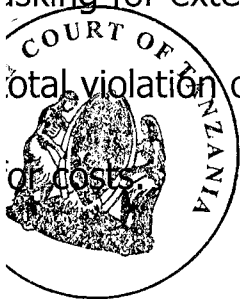
Ms. Mutayangurwa is right in my view that "orders of the court must be strictly complied with." I am aware, the applicants asked the indulgency of the court based on the principle of justice. That this court should not be strict on procedural aspects. That it should exercise its inherent powers as stated under Article 107 A (2) (d) and (e) of the Constitution of the United Republic of Tanzania without being tied up with technicalities. In other words, he was referring to the well-known overriding objective principle, which however cannot be applied wholesale. The Court of Appeal, in the case **of Njake Interprise Limited v. Blue Rock Limited and Another**, Civil Appeal No. 69 of 2017, CAT at Arusha (unreported) held that:-


"The proposed amendment are not designed to blindly disregard the rules of procedure that are couched in mandatory terms..."

It cannot therefore be used to disregard the court order which has been disregarded for the second time.

I would therefore disagree with the applicants for two obvious reasons. This is the second time they commit the same error, filing application for leave to file a representative suit without applying for extension of time to file same. Secondly, the main dispute arose in 2010 and therefore almost 10 years have elapsed. There must be an end to litigation.

This application which was preferred under Rule 44 (2) of the Labour Courts Rules, GN No. 106 of 2007, is improperly before the court. There cannot be application for leave to file a representative suit without first asking for extension of time to file same as it is out of time. It was filed in total violation of the court order. Accordingly, it is struck out with no order




M. G. MZUNA,
JUDGE.
22. 10. 2020