

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

**HC CIVIL CASE No. 15 OF 2019
EX- F. 5553 PC GERALD TUJI KAVELAGA PLAINTIFF
VERSUS
INSPECTOR GENERAL OF POLICE 1ST DEFENDANT
ATTORNEY GENERAL 2ND DEFENDANT**

RULING

23rd December, 2019 & 6th February, 2020

Kahyoza, J.

Ex- F. 5553 Pc Gerald Tuji Kavelaga, sued the Inspector General of Police and the Attorney General, (the defendants) claiming for compensation for unlawful termination. Kavelaga also prayed to this Court to quash the decision of the Inspector General of Police to terminate him and to order his reinstatement. The defendants filed their defence and contended that the suit was not maintainable on the ground that Kavelaga filed the suit out of time, that he omitted to plead facts showing that this Court has jurisdiction as required by law and further, that the he did not issue a ninety days' notice to the defendants before instituting a suit.

The issues for determination are: -

1. Was the suit filed out of time?
2. Was Kavelaga's failure to state facts showing that the High Court has jurisdiction an incurable defect?
3. Did the defendant issue a ninety days' notice to the defendants before instituting a suit as required by law?

The Inspector General of Police employed the plaintiff and terminated his employment on the **10th day of January, 2013**. The plaintiff appealed against termination and on the 10th September, 2017, the appellate body quashed the plaintiff's appeal confirming his termination. As result, the plaintiff instituted the current suit on the **9th day of September, 2019**.

1. Was the suit filed out of time?

The plaintiff contended that the application was not out of time as time started running on the date his termination was confirmed and not from the date of his termination.

The law is very clear that a suit must be filed before the prescribed period of limitation expires. See section 3 of **the Law of Limitation Act**, [Cap. 89 R.E. 2002] (the Law of Limitation). It states-

*“Subject to the provisions of this Act every proceeding described in the First column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefor opposite thereto in the second column, **shall be dismissed** whether or not limitation has been set up as a defence”. (my emphasis)*

The defendants submitted, and rightly so, that the Law of Limitation period does not provide the period within which to institute a dispute based on unlawful termination. For that reason, the instant suit falls under the general provisions of the law. It falls under paragraph 24 of Part I to the Schedule of the Law of Limitation. Paragraph 24 provides that-

Any suit not otherwise provided forsix years.

The First defendant terminated the plaintiff's employment on the **10th day of January, 2013**. The plaintiff appealed against termination and on the

10th September, 2017, the appellate body quashed the plaintiff's appeal confirming his termination. As result, the plaintiff instituted the current suit on the **9th day of September, 2019**. The plaintiff does not dispute that this suit was required to be filed within a period of six years from the date of unlawful termination. He contends that, in the circumstances of this case, time did not start running from the date he was terminated, rather it commenced running from the date his termination was confirmed by the appellate body. The plaintiff's termination was confirmed on the **10th September, 2017**.

I find it pertinent to determine at point in time did the cause of action in this case accrue. Section 5 of the Law of Limitation provides that "subject to the provisions of this Act of action in respect of any proceeding, shall accrue on **the date on which the cause of action arises**". If the cause of action does not commence running on the date it arose, **Section 6 of the Law of Limitation** provides circumstances under which the cause of action is said to accrue. The current situation is not covered under section 6.

I scrutinized the plaint and found that the plaintiff is challenging the order terminating him and not the order which confirmed his termination. The plaintiff states under paragraph six of the Plaint that-

"That the plaintiff was dismissed by the 1st Defendant that his dismissal procedure was unjustified and unreasonably (sic), he made administrative pursuit to have the decision reversed by Appeal (sic) to the 1st Defendant but the efforts proved futile on the unreasonable and unfair decision..."

For that reason, the cause action accrued from the date the plaintiff was

terminated and not the date his termination was confirmed by the appellate body.

Given the above finding that the cause action in the instant case arose on the **10th day of January, 2013** and basing on paragraph 24 of Part 1 of the Schedule to the **Law of Limitation**, the plaintiff was required to institute this suit before the expiry of six years. Six years expired on or before **10th January, 2019**. Thus, the plaintiff instituted the suit on the **9th day of September, 2019 out of time and without leave of this Court**. The plaintiff may have reasons for the delay but such reasons should have supported his application for leave to institute the suit out of time. In other words, the plaintiff was required to first apply for extension of time to institute the suit from the relevant authority before he filed the instant suit.

Given the finding on the first issue, I am not compelled to determine the remaining issues.

It is a general principle of law that the remedy available to a case which is not heard on merits is to strike it out and not to dismiss, see the case of Civ. Appl. No. 3/2010 **Cyprian Mamboleo v. Eva Kioso and Mrs Semwaiko**. The Court of Appeal stated that

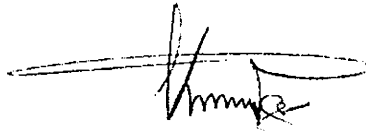
..... This court, accordingly, had no jurisdiction to entertain it, what was before the court being abortive, and not a properly constituted appeal at all. What this court ought strictly to have done in each case was to "strike out" the appeal as being incompetent, rather than to have "dismissed" it: for the latter phrase implies that a competent appeal has been disposed of, while

the former phrase implies there was no proper appeal capable of being disposed of.

I am of the view that the above principle has an exception, and the only exception is in limitation of time. The law of Limitation Act under section 3 (1) provides that any proceeding which is instituted out of time must be dismissed. Such dismissal is, however, is not a bar to subsequent proceedings, such as an application for extension of time or re-filing of the appeal after being granted extension of time.

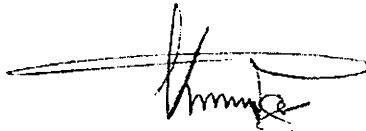
For the above reasons, I dismiss the suit for being time barred with costs.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
6/2/2020

Court: Ruling delivered in the absence of the parties with notice in Chambers. B/C Charles.



J. R. Kahyoza
JUDGE
6/2/2020