

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

LABOUR REVISION NO.35 OF 2020

(Originating from CMA/MZ/ILEM/250 -102, 103,104/2018)

BOAZ MASONGA AND 3 OTEHRS APPLICANTS

VERSUS

BULYANHULU GOLD MINE LIMITED RESPONDENT

JUDGMENT

Date of Last Order: 12.04.2021

Date of Ruling: 15.04.2021

A.Z.MGEYEKWA, J

This is an application which was brought under Rule 43 (1), (a) of the Labour Court Rules, G.N No. 106 of 2007. The application was supported by an affidavit sworn by Joseph Kinango.

On 15th April, 2021 when the matter came for hearing before me, Mr. Kinango, learned counsel represented the applicant while Mr. Malongo, learned counsel represented the respondent.

Throwing the first jab was Mr. Kinango who was brief and straight to the point. He urged this court to adopt the applicant's affidavit to form part of his submission. The learned counsel for the applicant chose to argue the first and the second grounds in a combined fashion. He contended that the case is related to tort and the cause of action arose on 28th December, 2016 and the applicant lodged his application on 21st December, 2017. He went on to argue that tort matters are governed by the Civil Procedure Code Cap.16 and the Law of Limitation Act, Cap. 89. He added that the Commission for Mediation and Arbitration was required to determine the matter within three years. To fortify his submission he referred this court to Law of Limitation Act Rule 6 of the Schedule which states that the limitation period for tort matters is three years.

It was Mr. Kinango's further submission that the cause of action from the criminal case was decided on 30th October, 2017 and the applicant lodged his case at the Commission for Mediation and

Arbitration on 21st December, 2017. Mr. Kinango added that counting the days it is obvious that the case was lodged within 60 days. He further stated that since the tort originated from the criminal case thus it was difficult to know if they were defamed before the decision of the court. The learned counsel for the applicant continued to submit that the Arbitrator determined whether the application was lodged within time or not. It was his view that the issue of time limitation could have been brought by way of objection instead of determining the same during hearing.

On the above strength of the above submission, Mr. Kinango beckoned upon this court to grant the applicant's application to order the Commission for Mediation and Arbitration to compose a new judgment.

In reply, the learned counsel for the respondent strongly opposed the application. Mr. Malango prayed for this court to adopt the counter affidavit and form part of his submission. He contended that it is not right to state that the issue of time limitation was supposed to be brought by way of preliminary objection since the issue of time limitation can be brought at any stage. He stated that the Commission

for Mediation and Arbitration framed issues for determination whereby the first issue was whether the application was time-barred.

Mr. Malongo went on to state that the issue of time limitation was required to be supported by evidence whereby PW1 stated that the application was published on 17th December, 2016 and 28th December, 2016. Mr. Malongo went on to argue that as per Rule 10 (2) of GN. No. 64 of 2007 the Labour Institution Mediation and Arbitration Rules; all disputes are required to be lodged at the Commission for Mediation and Arbitration within 60 days from the date when the cause of action arose save for matters related to unfair termination.

Mr. Malongo did not end there he stated that counting from 28th December, 2016 the 60 days ended on 24th February, 2017 while the applicant lodged his application on 21st December, 2017, a delay of more than nine months. Insisting, Mr. Malongo argued that in accordance with Rule 10 (2) of GN. No. 64 of 2007 the application was time barred. He went on to argue that citing the Law of Limitation Act is not correct because there is a proper law that provides for time limitation. Mr. Malongo fortified his submission by referring this court to section 43 (f) of the Law of Limitation Act which states that the Act

does not apply where the period of limitation is prescribed by any other law.

The learned counsel for the respondent valiantly argued that the criminal case does not exempt the applicant to file the case of 60 days. He further argued that the applicant in Form 1 stated that the cause of action was defamation not malicious prosecution. He added that the dispute started to run from the time when the cause of action arose not otherwise. Insisting he argued that the applicant was required to apply for extension of time to file their application out of time.

On the strength of the above submission, Mr. Malongo beckoned upon this court not to grant the applicant's application.

Having summarized the submissions and arguments of both learned counsels for and against the appeal, I should now be in a position to determine the grounds of appeal on which the parties bandying words. I will determine the grounds raised by the learned counsel for the applicant generally. The appellant's Advocate complaints that the cause of action was tort therefore in his view, the applicant's application was within time since the time limitation to

lodge a suit is three years as stipulated under the Law of Limitation Act, Cap. 89 [R.E 2019]. I have traversed through the Commission for Mediation and Arbitration records and found that the applicant in Form 1 stated that the cause of action was defamation and not tort.

I understand that in employment matters tort can arise. However, even if the same would be tort still the law applicable in any dispute related to labour matters is labour Rules. Therefore, in the instant application as rightly pointed out by Mr. Malongo, the applicable law to rely upon was Rule 10 (2) of GN. No. 64 of 2007 of the Labour Institution (Mediation and Arbitration) Rules of 2007; all disputes are required to be lodged at the Commission for Mediation and Arbitration within 60 days from the date when the cause of action arose save for matters related to unfair termination. Rule 10 (2) of the Labour Institution (Mediation and Arbitration) Rules of 2007 provides that:-

" 10 (2) All other disputes must be referred to the Commission within sixty days from the date when the dispute arised."

Guided by the above provision of law, it is obvious that the applicant was required to file his application within 60 days from the

date when the cause of action arose. The learned counsel for the applicant claim that the tort is governed by the Civil Procedure Code Cap. 16. With due respect to the learned counsel for the applicant on his contention that the Civil Procedure Code applies in the circumstance of the case at hand, I hold to the contrary, that the Civil Procedure Code does not apply in the instant application because there is a specific law which provides for time limitation in labour matters. Therefore the proper law in this matter is the GN. No. 64 of 2007 the Labour Institution Mediation and Arbitration Rules of 2007.

Mr. Kinango also lamented that the applicant was not able to institute the application at the Commission for Mediation and Arbitration within time because there was a criminal case pending in court, He went on to state that the applicant was not sure if the criminal case could result to defamation therefore after the decision of the court the applicant opted to file the matter at the Commission for Mediation and Arbitration. The respondent's Advocate was on his view that the time taken in a criminal case cannot be exempted instead the applicant was supposed to apply for extension of time.

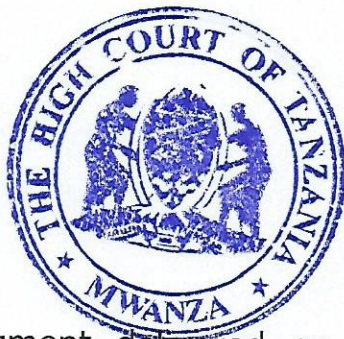
I am in accord with the learned counsel for the respondent that a criminal case did not exempt the applicant to file the application out of time. As I have pointed earlier that as long as the cause of action was related to employment matters the law governing labour matters was required to be adhered to. The applicant was required to file his application within the prescribed period of 60 days.


I have perused the Commission for Mediation and Arbitration records and found that the issue of time barred was among the issue for determination. In determining the said issue the Arbitrator found that the Labour Dispute CMA/MZ/ILEM/250 -102, 103, 104/2018 was time barred. The learned counsel for the applicant claims that the issue of time barred was supposed to be brought by way of preliminary objection does not hold water. I am in accord with the learned counsel for the respondent that the issue of limitation can be raised at any stage, even at the appellate stage, by any party, and the court *suo mottu* can raise the same too.

This is a clear position set out authoritatively by the Supreme Court of India in the case of **Chitturi Subbanna v Kudapa Subbanna & Others** 1965 AIR 1325.

In the upshot, I find no any merit in the instant application
therefore I proceed to dismiss the application without costs.
Order accordingly.

DATED at MWANZA this 15th April, 2021.




A.Z.MGEYEKWA
JUDGE
15.04.2021

Judgment delivered on 15th April, 2021 via audio teleconference
whereas Mr. Kinango, learned counsel for the applicant, and Mr.
Malongo, learned counsel for the respondent were remotely present.


A.Z.MGEYEKWA
JUDGE
15.04.2021

Right to appeal fully explained.