

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)**

AT BUKOBA

Misc. LABOUR APPLICATION No. 8 OF 2020

*(Arising the Commission for Mediation and Arbitration of Bukoba at Bukoba
in CMA/BUK/72/2017)*

EDITH NABABI ----- APPLICANT

Versus

**KEMEBOS ENGLISH MEDIUM
BOARDING PRIMARY SCHOOL ----- RESPONDENT**

RULING

01.07.2021 & 05.07.2021

Mtulya, J.:

An application for enlargement of time was filed in this court in **Misc. Labour Application No. 8 of 2020** (the Application) to persuade this court to decide a leave for enlargement of time in favour of Ms. Edith Nababi (the Applicant) to file Labour Revision in protest of the decision of the Commission for Mediation and Arbitration of Bukoba at Bukoba (the Commission) in CMA/BUK/72/2017 (the decision).

The Application was filed on 20th November 2020 to protest the decision rendered down on 25th May 2018. However, before the Application was scheduled for hearing to scan the reasons for delay, it received a preliminary objection on point of law (the objection). As

the objection touches the constitutional right to fair hearing, access to this court and second & third pillars enshrined in the Judiciary of Tanzania Five-Years Strategic Plan 2020/21-2025/2026 (the Plan) on: access to justice; expeditious decisions making; and public trust, a brief background of the matter, albeit in brief, is important to be displayed for purposes of appreciation of the objection.

The Applicant had approached the Commission sometimes in August 2017 complaining of unfair oral termination from her contract of employment by Kemebos English Medium Boarding Primary School (the Respondent) through Respondent's Manager. The Commission decided in favour of the Respondent and its reasoning is found at page 9 of the decision:

Ushahidi wa mlalamikaji kwamba alifukuzwa kazi hauna nguvu kwa kuwa hana barua ya kufukuzwa kazi...na hata kama angekuwa amefukuzwa kazi bado hasingeweza kudai nafuu za kuachishwa kazi kwa kuwa baada ya kibali chake cha kufanya kazi Tanzania kumaliza muda wake aliendelea kufanya kazi chini ya mkataba batili bila kuwa na kibali cha kufanya kazi.

The Applicant was dissatisfied with the decision hence preferred **Labour Revision No. 16 of 2018** (the Revision) in this court.

However, the Revision was dismissed on 27th October 2020 before it was heard on merit for want of time limitation. Being vigilant and the need to access this court, the Applicant came to this court again on 20th November 2020 praying for enlargement of time to file a labour revision out time. Her reasons of delay are displayed in the Affidavit, but before were called for hearing, the objection was registered stating that the Application is irredeemably incurably incompetent in law for being filed and determined in the Revision.

In a brief statement in support of the objection, the Respondent's learned counsel stated that the Applicant was already heard and determined in the Revision, but decided to file the Application to register the same dispute in this court. According to the learned counsel, dismissed proceedings for want of time limitation are barred as per section 3(1) of **the Law of Limitation Act** [Cap. 89 R.E. 2019] and precedent in **MM World Wide Trading Company Limited & Two Others v. National Bank of Commerce Limited**, Civil Appeal No. 258 of 2017.

In protest of the objection, the Applicant, a lay person and enjoyed no legal representation, prayed this court to test the substance of the dispute by declining the objection and invite the *obiter dictum* displayed at page 10 of the judgment in the same precedent of **MM World Wide Trading Company Limited & Two**

Others v. National Bank of Commerce Limited (supra). In that page the Court of Appeal visited the precedent in **Ngoni-Matengo Co-operative Marketing Union Limited v. Ali Mohamed Osman** [1959] E.A 577 and stated that it is the substance of the matter that must be looked at rather than the words used.

On my part, I think, since enactment of of article 107A (2) (e) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] & section 3A & 3B of the Civil Procedure Code [Cap. 33 R.E 2019] as interpreted in **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017; precedents in **Ngoni-Matengo Co-operative Marketing Union Limited v. Ali Mohamed Osman** (supra); and cherishing second & third pillars in the Plan on: access to justice; expeditious decisions making; and public trust, this court has changed to abide with the words of his Lordship Samatta. J., in **VIP Engineer and Marketing Ltd. v. Said Salim Bakhresa, Civil Applicant No. 47 of 1996**, when he stated that:

*While the importance of litigants complying with the rules of procedure cannot be over emphasized, **it must not be forgotten that there is a danger of consumers of justice losing confidence in the courts if judicial officers are obsessed more with strict compliance with***

*procedural rules than what the merits of the disputes before them are **to stray into that error is to aid the judicature's grave diggers***

(Emphasis added).

In the present case, there is a consumer of justice, a lay person disputing oral unfair termination of contract of services and she is asking access to this court, but was late in bringing her action. She approached this court again asking enlargement of time to give reasons of her delay.

However, she was congested by the objection. In circumstances like the present one, this court is put into test on whether it will preserve the constitutional right to fair hearing, access to this court and second & third pillars enshrined in the Plan on access to justice, expeditious decisions making, and public trust.

Practice of this court in the precedents of **Theotimo Itanisa & Another v. Godwin Rugomolo**, Misc. Civil Application No. 13 of 2018 & and Court of Appeal in **Ramadhani Beka v. The Republic, Criminal Appeal No. 349 of 2016**, and **Francis Petro v. Republic, Criminal Appeal No. 534 of 2016**, stated that appeals found incompetent by reason of late filing may be filed out of time after leave of extension of time. The practice allows access to this court

and cherish article 13 (6) (a) & 107A (2)(e) of the Constitution on the right to be heard and access to this court without congestion (see: **Judge In Charge, High Court At Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44 and **Yazidi Kassim Mbakileki v. CRDB (1996) LTD & Jackem Auction Marts & Court Brokers, Civil Reference No. 14.04 of 2018**).

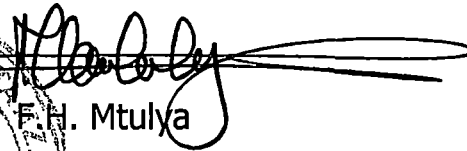
I understand there is citation of the decision of our superior court in this objection, namely: **MM World Wide Trading Company Limited & Two Others v. National Bank of Commerce Limited** (supra). However, the real question before the Court is found at page 1 of the precedent: *whether it is open for a trial court to adjudicate on a suit founded on a subject matter already declared as time barred in a former suit before the same court*. Its reply is found at page 10 and 11 of the precedent, which in part reads: *it was not open for the respondent to institute a fresh suit as it were, simply because the trial court struck out the former suit rather than dismissing it as mandated in section 3 (1) of the Law of Limitation Act....the issue of limitation had been finally and conclusively determined. It became res judicata*.

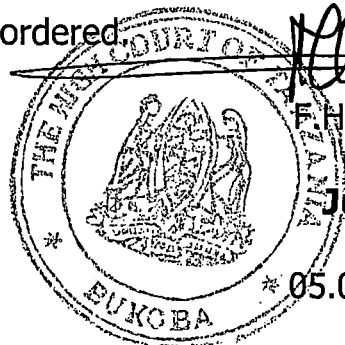
The facts in the precedent shows further that the Appellants had filled two different cases searching for an alternative access to this court on the same original dismissed case, viz: **Commercial Case No. 166 of 2014** and **Commercial Case No. 84 of 2015** before

commercial division of this court. This is not the circumstances in the present Application. The Application is seeking continuity of the dispute by seeking constitutional right to fair hearing and access to this court which has not yet tested the contents of the dispute.

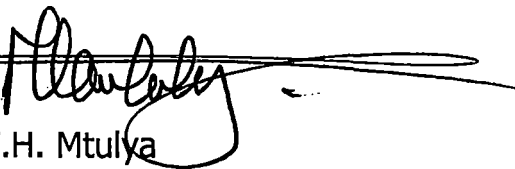
To my opinion, the present Application is not a *res judicata* and if decided in favour of the Applicant it cannot be said as *res judicata* as this court was not given an opportunity to test the contents of the dispute and determined the matter on merit to the finality. Having said so and considering the right to be heard and cherishing the Plan of our Judiciary in this State earning trust to justice consumers, I have formed an opinion to overrule the objection as I hereby do.

It is do ordered.


F.H. Mtulya
Judge
* 05.07.2021



This Ruling was delivered in chambers under the seal of this court in the presence of the Applicant Ms. Edith Nababi.


F.H. Mtulya
Judge
05.07.2021

