

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

(KIGOMA REGISTRY)

AT KIGOMA

MISC. APPLICATION NO. 5 OF 2021

(Arising from the Decision of the Minister of Labour of 2009, Original Decision in Labour Dispute no. KIG/DCB/15/05 of the Conciliation Board of Kigoma of 2005)

ASTON MPARAZO APPLICANT

VERSUS

NABHANI BUS SERVICE (NBS)RESPONDENT

RULING

10/5/2022 & 23/5/2022

L. M. Mlacha,J

This is a ruling on preliminary points of objection raised by counsel for the respondent, NABHAN BUS SERVICE (NBS) Mr. Michael Mwangati. Counsel raised 4 points which reads thus;

1. That, the Application is incompetent and misconceived on failure to adhere with Rule 24(1) (2) of the Labour Court Rules, GN 106/2007 in the chamber summons.

2. That, the Application is incompetent for non-citation of Rule 24(11) (a), (b), (c) of the Labour Court Rules, GN 106/2007 in the chamber summons.
3. That the Application is against Rule 46(1) of the Labour Court Rules, GN. 106 of 2007
4. That the Application is against rule 43(1) of the Labour Court Rules, GN. 106 OF 2007.

The applicant's case is that in the year 2000 he was employed by NBC bus owned by the respondent and worked up to 2005 when he was dismissed summarily. He referred the matter to the Conciliation Board which made a decision in his favour on 8/7/2008. The respondent appealed to the Minister under the old scheme. The appeal was dismissed. Both decisions are attached in the affidavit. He then came back to the Conciliation Board for execution but the decision could not be executed. He could not succeed to execute the decision despite several follow ups. He has now come to this court seeking extension of time within which to file the application for execution before this court.

The application is entitled 'Miscellaneous Labour Application No. 5 of 2021' and is made under section 21 of the Law of Limitation Act, cap 89 R.E.

2019, Section 95 of the Civil Procedure Code Act, cap 33 R.E 2019, Section 28(1) of the security of Employment Act Cap R.E 2002 and the Third schedule of the Employment and Labour Relations Act No. 6/2004 para 8-10 together with any enabling provision. Counsel for the respondent says that the provision under which the application is made are not applicable.

Mr. Michael mwangati argued grounds 1 and 2 together. He submitted that, the application was presented contrary to the procedure of bringing labour matters before the court. Counsel said that all applications in this court have to be brought under rule 24(1), (2) (a) (b) (c) of the Labour court Rules GN 106/2007. These provisions were not cited in this application making it bad in law.

In ground 3 counsel for the respondent submitted that the application contravenes rule 46 (1) which says that all applications must be paginated. This was not done here, he said. In ground 4 counsel submitted that the application contravened rule 43(1) of the Labour Court Rules which required the applicant to file a notice of representation. This notice is missing, he said.

The applicant Ashton Mparazo was represented by Ms. Medtilda Mpeti. Counsel submitted on ground 4 saying that she filed the notice of representation in court but counsel for the applicant was away. She could not serve him physically but the notice is there. Submitting in reply to grounds 1, 3 and 3, counsel said that the objection is baseless because the case was heard under the Security of Employment Act not under the Employment and Labour Relations Act. She said that section 103 of the Employment and Labour Relations Act read with para 9,10 and 11(2) of the 3rd schedule to the Act have saving provisions. The provisions say that all cases which were decided under the repealed laws shall be treated as if the Laws have not been repealed, she said. She went on to say that the Employment and Labour Relations Act does not operate retrospectively. She referred the court to its decision made in **John Elias vs. The Registered Trustees of CCM**, Revision No. 175/2019 (High Court of Dar es salaam) on this aspect.

Mr Michael Mwangati made a rejoinder and reiterated his earlier position adding that section 103 is not existing. The Act ends with section 101.

I have considered the counsel submissions. I have also revisited the Law. I will start with the last comment of Mr. Mwangati. With respect to the

counsel, the Act does not end with section 101. Section 103 is there and it has three subsections. For easy of reference the provisions are reproduced in full as under:

"103 – (1) The Laws specified in the second schedule are repealed subject to the savings and transitioned provisions set out in the third schedule.

(2) Each of the Laws specified in the second schedule are amended to the extent specified in that schedule.

(3) The third schedule governs the transition from the administration of the Laws repealed under paragraph (i) to administration of the matters in this Act".

One of the repealed laws is the security of Employment Act, cap 574 under which the decision in this case was made. I agree with Ms. Mechilida that section 103 read with para 9,10 and 11(2) of the 3rd schedule to the Employment and Labour Relations Act has saving provisions. For easy of reference Para 9, 10 and 11(2) of the third schedule are reproduced as under:

"9(1) Any dispute contemplated in the repealed laws arising before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

(2) Any dispute referred to a labour officer under the repealed laws before the commencement of this Act shall be dealt with shall be dealt as if the repealed laws had not been repealed.

(10) Any reference to the Minister stipulated under the repealed laws shall be dealt with as if the repealed laws had not been repealed.

11, (2) Any claim arising under the repealed laws before the commencement of this Act shall be dealt with as if the repealed laws have not been repealed" (Emphasis added).

My reading of section 103, paras 9,10 and 11(2) of the third schedule and the second schedule to the Employment and Labour Relations Act show that the Security of Employment Act was repealed but saved to operate to finish pending matters. Counsel for the applicant has referred us to paras 9,10 and 11(2) of the third schedule. They all say that any dispute arising out of the repealed laws shall be dealt with as if the repealed laws have not been repealed. This means that they shall be continued and be finalized under the repealed laws. It is thus correct, as said by counsel for the applicant that the Labour court Rules are not applicable in the application before the court. The applicable law is the security of Employment Act read with other laws which are relevant in the subject. That is exactly what was

done here making the objections baseless. The objection based on failure to serve the notice of representation is also baseless because service of the notice was not a requirement under the old schemes.

That said, the objections are found to be baseless and dismissed.



L.M. MLACHA

JUDGE

24/6/2022

Court: Ruling delivered. Right of Appeal Explained



L.M. MLACHA

JUDGE

24/6/2022