

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 81 OF 2020

ANTHONY LING'WETU & 156 OTHERS.....APPLICANTS

VERSUS

TANZANIA PORTS AUTHORITY.....RESPONDENT

RULING

Date of last Order: 13/11/2019

Date of Ruling: 18/11/2020

Z.G.Muruke, J.

Kulwa Nkwambi and 399 others (applicants) were employed as casual labourers, in 1994, by the then Tanzania Harbours Authority ('THA'). They worked until 1998, where they requested to be employed and paid as permanent employees. THA Management declined to accept the applicant's claim. Following refusal, applicants instituted Labour Inquiry No. 115 of 2002 against respondent, in the defunct Industrial Court of Tanzania, claiming to be employed and paid benefits as permanent employees. The Industrial Court (Mwipopo, J.) pronounced its award on 24th October, 2003, declaring the applicants as daily workers and ordered respondent to pay them benefits of daily workers, not permanent workers. The applicants were paid as per the award of the Industrial Court, however, applicants instituted Revision No. 20 of 2005. Their revision application was dismissed for being time barred on 15th March, 2006 and appeal to the full bench of the High Court in Civil Appel No. 74 of 2006 was also struck out for being incompetent. The decision of the High Court in Civil Appeal No. 74 of 2006 has not been challenged to date.

Having lost the battle in the High Court, the applicants resorted to administrative remedies by lodging several complaints with the Minister of Transport. The Administrative pursuit also failed. Applicants made a U-turn and filed Execution No. 352 of 2013 to enforce the Award in original Enquiry number 115 of 2003, but was dismissed on 7th March, 2014 by the Deputy Registrar. Applicants consequently lodged Revision No. 88 of 2014 which was placed before Hon. Mashaka, J who revised the decision of the Deputy Registrar, by ordering applicant to be paid according to the award in inquiry number 115 of 2002 **if not paid**. However, Later on applicants filed Misc application No. 168 of 2018 praying for leave of representative suit, which this court granted 30 days to file intended review application. Then applicants filed Misc application number 98 of 2019 which was struck out for being incompetent. Following the striking out of Misc application No. 98 of 2019, the applicants lodged the instant application, praying for court to review, determine and issue orders over their emoluments under the Award of the defunct Industrial Court of Tanzania (ICT) dated 24th October, 2003, as follows:-

- 1. The respondent should firstly recognize all the applicants having served as employees on monthly basis between January, 1997 and March, 2004.**
- 2. The respondent must pay each of all applicants, not daily wages, but the prevailing basic salary of Tshs. 723,000,000 by March, 2004 for a period of 8 years.**
- 3. The applicants should also be paid one month's salary in lieu of notice.**
- 4. They further be paid severance allowance to each at 5 percent of the prevailing salary from 1st January, 1994 till 31st March, 2004.**



5. Any other relief(s) which this Honourable court may deem fit to grant.

Respondent filed Notices of Preliminary objection raising three points of law namely:-

- i. The application is time barred.**
- ii. The application us res judicata; and**
- iii. This Honourable court has no jurisdiction to entertain this application.**

On the date set for hearing, applicants were being represented by Mr. Timoth Kahoho, Personal representative of their own choice, while Learned State Attorneys Charles Shija, Said Kurwa Mwambuli, and Christian Chiduga represented respondent at a different times. Preliminary objection was ordered to be argued by way of written submissions.

In support of first preliminary objections learned state attorney for Tanzania Ports Authority submitted that the applicants in Misc. Application No. 168 of 2018 prayed for leave of representative suit, and granted on 13th February, 2019, when court ordered the applicants to lodge their intended application within 30 days from the date of the order. By virtue of this order of 13th February, 2019, the applicants were required to have filed their application on or before 16th March, 2019. Consequently, applicants filed application No. 98 of 2019 on 12th March, 2019. However the said Misc Application No. 98 of 2019 was struck out for being incompetent on 20th February, 2020 by Honourable Mwipopo,J.

The legal effect of the order striking out Misc application No. 98 of 2019 is that there has never been any application by the applicants since 14th March, 2019 when the leave of the leave of representative suit was



granted by this Honourable Court. Surprisingly, the applicants lodged instant applicant on 16th March, 2020, out of the period of the thirty days granted by this court without seeking first extension of time. This is unacceptable and this Court cannot entertain an application filed out of the time prescribed by this Court. Learned State Attorney referred the decision of this court in the case of YOAZE SENZIGHE AND ANOTHER Versus TANZANIA PORTS AUTHORITY, Revision No. 345 of 2019.(Unreported)

In response to the first preliminary objection, applicant personal representative submitted that respondent objections are frivolous, as they are raised with a view of depriving the applicants legal rights under the decree in revision number 88/2014 issued since 24th day of March, 2016. Applicant personal representative, insisted that, any preliminary objection has to be pure point of law referring the case of **Mukisa Biscut Manufacturing Co. Ltd Vs. West End Distributors Ltd** E.A 696. In the case at hand all the preliminary objection ought to be dismissed as they are not pure point of law. On the merits of first preliminary objection on time limitation, applicant representative submitted that present application is the outcome of a ruling in Misc application number 98 of 2019 Mwipopo,J dated 25th February, 2020, in which it was held that;

“ Therefore the only remedy available to this application is to strike it out and I hereby strike it out.”

Applicants filed Misc application No. 98/2019 within time of 30 days, from the striking of first application on 25th February, 2020. Present application was filed on 16th March, 2020, so from 25th February, 2020 – 16th March,2020, it is within 30 days. Thus application is not out of time,

therefore preliminary objection on time limitation should be dismissed argued applicant personal representative Mr. Kahoho.

Having heard both parties submission on the first preliminary objections, I wish to start at the outset that both preliminary objections raised are pure points of law, applicant representative prayer to dismiss all the preliminary objections for not being points of law is without merits.

There is no dispute that applicants were granted leave of representative and ordered to file intended application within 30 days from the date of order in Misc application number 168/2018. Applicants complied and filed Misc application number 98/2019, in which it was struck out for being incompetent on 25th February, 2020. Subsequent to the above, applicants filed present application on 16th March, 2020, without first seeking extension of time to do so. Applicant representative argued that, application is within 30 days granted by the court. This is a serious misconception by applicant representative. When Misc Labour application 98/2019 struck out for incompetence by honourable Mwipopo,J there was no leave of 30 days granted to refile.

For clarity last paragraph of the ruling read as follows:-

But also since there are objections on the time limitation of filing this application in court and that the court was not properly moved by the applications, I am of the opinion that the prayer for leave to file a fresh application cannot be granted. Therefore the only remedy available to this application which I find to be incompetent is to strike it out and I hereby strike it out.

The above part of the ruling is self-explanatory. Applicant representative is closing eyes to avoid a clear preliminary objection on time limitation. Following, Misc application number 98/2019 to be struck out there is nothing left for the court to hold for the applicants to prove that present application is within time. ***Time limitation is mathematics in law, one cannot overlook time specified within which to file certain dispute. Without limitation of time, court will have endless litigations at the whims of the parties.*** The time of thirty days granted by this court, applicant used the same by filing Misc Labour application number 98/2019, that ended up being struck out. Applicant ought to have sought extension of time before filing present application.

It has been demonstrated by applicants representative sworn affidavit Mr. Anthony Lung'wetu that since filing inquiry number 115/2002 they have been dragging respondent in the machinery of justice to the date of filing present application. So, it is a period of 18 years at a different time and forum respondent is being asked to answer applicants complains as demonstrated bellow;

- (i) **Labour inquiry was No. 115/2002 filed, award issued on 24th October, 2003, where it was ordered that applicants are daily workers entitled to be paid their benefit of daily workers not permanent workers. Respondent paid applicants accordingly.**
- (ii) **Applicant filed Revision No. 20 of 2005, that was dismissed for being time barred on 15th March, 2006.**
- (iii) **Applicant appealed to the fully bench of the High Court in Civil Appeal No. 74/2006, that was struck out for being incompetent on 2008.**
- (iv) **Applicant filed Execution No. 352/2013 that was dismissed on 7th March, 2014 by Deputy Registrar.**



- (v) **Applicant filed Revision No. 88/2014 to challenge district registrar order, in which Honourable Mashaka, J held that, applicants to be paid in accordance with Award in inquiry number 115/2002 if not paid.**
- (vi) **Applicants filed Misc application No. 168/2018 for leave of representative suit that was granted, and given 30 days to file intended review application on 13rd February, 2019.**
- (vii) **Applicant filed Misc application number 98 of 2019 that was struck out by Hon. Mwipopo,J on 20th February, 2020 for being incompetent.**
- (viii) **Applicant then filed present application on 30th December,2019 seeking review of decision of Industrial Court way back 24th October, 2003 on Inquiry number 115/2002.**

In all the appeal, Revision, Review, applications, and executions, filed for 18 years by applicants, they have been either dismissed, or struck out except Revision No. 88/2014 before Mashaka,J in which, court ordered that applicant to be paid in accordance with decision of the industrial court if they were not paid. For 18 years respondent has been prejudiced by ongoing dispute filed by applicants, contrary to the purpose of the Labour Laws, that is geared at regulating and guide relations in the employment and labour industry to come to an end for enhanced efficient and productivity for attainment of social justice.

Unfortunately, applicants have been drugging respondent in court without paying any costs upon failure of their case. According to Section 50(6) of the Labour Institutions Act No. 7 of 2004 as amended by Section 19(b) of the written laws (Miscellaneous Amendment) Act No. 3 of 2010 and Rule 51 of the GN No. 106 of 2007 and Section 88(9) of the



Employment and Labour Relations Act No. 6 of 2004 and Rule 34 of the GN No. 64 of 2007, Labour disputes are free of costs, interests and fees, however, costs are only allowed where there is the proof of frivolous and/or vexatious proceedings. Issue of costs in labour cases was also discussed in the case of Tanzania Breweries Limited Vs. Nancy Maronie, Labour Dispute no. 182 of 2015 (unreported) where it was held that, ***whether the dispute or application is before the Commission for Mediation and Arbitration or in the High Court of Tanzania, cost is awarded only where there is an existence of frivolous and/or vexatious proceedings.***

Honourable Vallensi Wambali, Acting Director Arbitration Department in the Commission for Mediation and Arbitration (CMA) in his recent paper titled IS COST FREE THE SOURCE OF DELAY IN HANDLING LABOUR DISPUTE: LAW AND PRACTICE IN TANZANIA, at page 3 paragraph 2 he said. ***The law is designed to make sure that in making decisions on costs orders the CMA and LC seek to strike a balance between on one hand, not unduly discouraging employees, employers, unions and employers association from approaching the Commission for Mediation and Arbitration(CMA) and Labour Court (LC) to have their disputes dealt with and on the other hand not allowing those parties to being frivolous and vexatious case.***

Court of Appeal granted costs upon withdraw of the notice of appeal in a matter originated from labour dispute in **Civil Application No. 600/08 of 2017 Stanbic Bank Tanzania Limited Vs. Bryson Mushi**, for clarity order is reflected below.

Upon the applicant lodging in Court a notice of withdrawal of the application on 22/05/2020 and non –appearance while duly notified to appear, Mr. Steven Emanuel Makwega, Learned Advocate, who

appeared for the respondent, had no objection to the prayer to withdraw the application but he pressed for costs.

We indeed, agree with Mr. Makwega that the applicant lodged the aforesaid notice for withdrawal of the application in terms of Rule 58(1) and (2) of the Tanzania Court of Appeal Rules, 2019 (the rules). We accordingly grant the applicant's prayer we mark the application withdrawn under Rule 58(3) of the Rules. The respondent to have costs of the case.

The above Court of Appeal decision is based on withdraw of notice, only, but costs was granted. In the case at hand, applicants has filed frivolous and vexatious applications for 18 years. It is worth insisting that the law is designed to make sure that in making decision on costs the Commission for Mediation and Arbitration (CMA) and Labour Court, seek to strike a balance between on one hand, not **unduly discouraging** employees, employers, unions and employers association from approaching the CMA and Labour Court to have their disputes dealt with and on the other hand not **allowing those parties to bring frivolous and vexatious case.**

According to Vallenci Wambali (supra) cost-free labour litigation as contemplated by the International Instrument had good motive specifically in assisting the **weaker** party who have **genuine claims** to easily access the court and Tribunal with aim of resolving the dispute **fairly** and **quickly** with the spirit of repairing the relationship between capital and labour. At the same time looking the way forward on how to increase efficiency through productivity at work and when doing so, social justice is upheld. The aim of cost –free was not to delay or deny or burry justice rather was to make sure justice is costless and time met.

It should be understood that, cost-free in labour matters is not a leeway or loophole to the parties to waste time and other resource, either in the Commission or in Courts and once this is not observed the court or the Commission will regulate the situation by awarding costs where frivolous and vexation acts have been proved. As demonstrated by series of frivolous and vexations applications filed by applicants for 18 years against Tanzania Ports Authority, thus there is a need to award costs to the respondent, for having been drugged in court unnecessarily, after the award in inquiry number 115 of 2003, which applicants are to enforce if not paid.

First preliminary objection is upheld, thus, Misc Labour application number 81 of 2019 filed on 16th March, 2020 is dismissed for being out of time with costs. Having resolve so, there is no need to deal with other grounds of objections.


Z.G. Muruke

JUDGE

18/11/2020

Ruling delivered in the presence of ^{Mr} Christian Chiduga, Learned State Attorney for the respondent and in the presence of Mr. Timoth Kahoho, applicants personal representative.


Z.G. Muruke

JUDGE

18/11/2020