

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISCELLANEOUS LABOUR APPLICATION NO. 115 OF 2020

BETWEEN

JOFFREY JAMBII APPLICANT

VERSUS

DAR ES SALAAM WATER AND SEWERAGE

AUTHORITY (DAWASA) 1ST RESPONDENT

PERMANENT SECRETARY, MINISTRY OF WATER 2ND RESPONDENT

OFFICE OF THE TREASURY REGISTRAR 3RD RESPONDENT

THE HON. ATTORNEY GENERAL 4TH RESPONDENT

RULING

Date of Last Order: 24/05/2021
Date of Judgement: 16/07/2021

About, J.

The application is made under section 94 (1) (e) of the Act, Rule 24 (1), 24 (2) (a) (b) (c) (d) (e) and (f), Rule 24 (3) (a) (b) (c) (d) and 55 (1) (2) of the Labour Court Rules GN No. 106 of 2007 (herein referred as the Labour Court Rules). The applicant filed the present application seeking for the following orders:-

- i. That, this Honourable Court be pleased to make an order on the application, interpretation and implementation of the provision of section 40 (1) (a) of the Employment and Labour

Relations Act, [CAP 366 RE 2019] (herein the Act) in regard to remuneration due to the employee from the date of purported termination of employment, on 29/12/2008 to the date the employee was provided with work on 31/07/2018, in compliance with the order of reinstatement.

- ii. That, this Honourable Court be pleased to make an order that the applicant be paid full remuneration amounting to a total sum of Tshs. 138,587,195.04 for the whole period construed to have been in continuous service hence entitled to benefits that had been granted to his co-workers as if nothing had happened on his part.
- iii. That this Honourable Court be pleased to grant 12% interest per year to cushion loss value of money which would have been paid 12 years ago.
- iv. That, this Honorable Court be pleased to make any other order that may meet the good ends of justice.

The court ordered parties to argue the application by way of written submission. Mr. Gaudine R. Mrugaruga, Personal Representative was for the applicant while Mr. Florence Saivoiye, respondent's Principal Officer appeared for the 1st respondent. On the

other hand, Mr. Masunga Kamihanda, Learned State Attorney was for the 2nd 3rd and 4th respondents.

In his written submission the respondent's counsel raised a preliminary objection that the application is time barred. Therefore, the Court finds it prudent to determine the preliminary objection first before going to the merit of the application.

It was alleged that the application for interpretation was filed out of time. It was submitted that, the award was delivered on 10/01/2017 thereafter the applicant filed an application for execution No. 53 of 2017 and Misc. Appl. No. 114 of 2018. It was argued that, the time limit to challenge the Arbitration award as per section 91 (a) (b) of the Act is six weeks. The Learned Counsel argued that, counting from the date when the award was issued 10/01/2017 to the date the applicant filed the present application on 15/06/2020 is more than three years. Thus, the application was filed out of time.

It was further submitted that, the time limit for filing application for interpretation of decision has not been provided under the Labour laws thus, the guidance should be sought from the Law of Limitation Act, [CAP 89 RE 2019] (herein the Law of limitation Act), under item

21 of the first schedule which clearly provide 60 days. The Learned Counsel further submitted that, even if it is assumed the applicant was dissatisfied by the execution order issued on 05/08/2018, still he was out of time to file the present application because its limitation is 60 days as provided in the Law of Limitation Act. He therefore prayed the application to be dismissed.

In rejoinder the applicant's representative neglected to respond on the preliminary objection. He submitted that, the raised point of law according to legal principles ought to have been raised by filing notice of preliminary objection.

After hearing the submission of the parties, I find the Court is called upon to determine if the preliminary objection relating to limitation of time has merit.

The issue of time limit goes to the root of the jurisdiction of the Court to determine the matter. It is an established principle that, objection relating to jurisdiction can be raised at any stage even that of an appeal. This is also the position of the Court of Appeal case of

Tanzania Revenue Authority Vs. Tango Transport Company

Ltd. Civil Appeal No. 84 of 2009 where it was held that:-

*'The law is well settled and Mr. Bundala is perfectly correct that **a question of jurisdiction can be belatedly raised and canvassed even on appeal by the parties or the court suo moto, as it goes to the root of the trial** (See, Michael Leseni Kweka; Kotra Company Ltd; New Musoma Textiles Ltd. cases, supra). Jurisdiction is the bedrock on which the court's authority and competence to entertain and decide matters rests.'*

The present application emanates from the Arbitration award delivered on 10/01/2017. Thereafter, the applicant filed an application for execution and its order was issued on 03/10/2017 as it is shown in annexure B. As rightly submitted by the respondent's Counsel the Labour laws are silent on limitation of time to file an application against Registrar's order/ruling. Under the powers vested to this Court by virtue of Rule 55 (1) (2) of the Labour Court Rules the Court may resort to other law.

The limitation period for applications which are not provided by any other written law is provided under the Law of Limitation Act as

correctly submitted by the Respondent's Counsel which is 60 days. Under the circumstances of this case, it is crystal clear the applicant wants this court to interpret the order issued by the Deputy Registrar on 03/10/2017. The applicant was supposed to file an application for interpretation within 60 days from the date of Registrar's order as rightly argued by the respondent's Counsel. The record shows that the present application was filed on 31/03/2020 which was after two years and six months.

It is the law requirement that when a party delays to file an application he/she should first apply to the court to extend time to file his intended application, which was not done in the present application. This position have been discussed in a number of cases including the case of **DED Sengerema D/Council Vs. Peter Msungu & 13 Others**, Lab. Div. Mwanza, Misc. Appl. No. 27/2013 (unreported) where Hon. Rweyemamu J. held that:-

'When an action is time barred a party seeking to initiate it must first apply for extension of time. That the applicant did not do, consequently, I find this application incompetent and dismiss it as per the requirement of the law and practice.'

It has been discussed in a number of cases that limitation is there to speed up administration of justice and to limit the parties not to bring litigation at their own whims. This position was firmly stated in the case of the position was restated in the case of **Tanzania Fish Processors Ltd Vs. Christopher Luhangula, Civil Appeal No 161/1994 Court of Appeal of Tanzania, at Mwanza** registry the court held that:

'the question of Limitation of time is fundamental issue involving jurisdiction ...it goes to the very root of dealing with civil claims, limitation is a material point in the speedy administration of justice. Limitation is there to ensure that a party does not come to Court as and when he wishes'.

The position was restated in the case of **Dr. Ally Shabhay vs. Tanga Bohora Jamaat [1997] TLR 305** where it was held that:

'It is settled law that those who seek justice in court of law must file proceedings within the prescribed time, otherwise they will face the law of limitation as a bar. Parties cannot conduct litigation as they deem fit. Limitation clause is there to speed truck proceedings. To

*the contrary, court will have endless litigations
at the whims of the parties'.*

In the matter at hand as stated above the registrar order was issued on 03/10/2017 and the applicant filed the present application after almost two years and six months without leave of the court. In my view, what the applicant did should be discouraged by courts. By allowing any party to come to court when he wishes is obvious that litigations will not come to an end and will defeat the purpose of the Law of limitation. Thus, the applicant was required to adhere to the Law of limitation, but he failed to do so and he did not even bother to first apply for extension of time before filing the present application.

Under the circumstance, I find the present application was filed out of time prescribed under the law as discussed above. Hence, the preliminary objection raised by the respondent's Counsel is sustained. Therefore, since the preliminary objection raised has an effect of disposing the matter, I find no relevance to determine the main application.

In the result, I find the preliminary objection raised by the Respondent's Counsel has merit because the application was filed out

of time and without leave of the Court. Thus, the application is dismissed from the court's registry accordingly.

It is so ordered.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

I.D. Aboud

JUDGE

16/07/2021