

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

DAR ES SALAAM

REVISION NO. 470 OF 2021

BETWEEN

ACHELIS TANGANYIKA LTD..... APPLICANT

AND

BENEDICT SEMBO..... RESPONDENT

RULING

Date of Ruling: 21/02/2022

B.E.K. Mganga, J.

This ruling is in respect of the issue raised by the court as to whether the application was filed within the time prescribed under the law or not. When called to submit on the issue raised by the court, Anthem Mwenda, advocate for the applicant, conceded that the application was filed out of time for a delay of four days. He prayed for lenience and in the interest of justice so that the application can be heard on merit. He further submitted that applicant is so remorseful and that had no intention to delay justice.

In his response, Mr. Benedict Sembo, respondent, argued that since the application is out of time, the same has to be dismissed.

In a brief rejoinder, Counsel for the applicant had nothing to add rather than praying the application to be heard on merit.

It is undisputed by the parties that, this application was filed out of time and that no leave was sought and order of extension of time granted to the applicant to file this application out of time prescribed by the law. Applicant was supposed to have applied for extension of time prior filing this application, as it was held in the case of **DED Sengerema District Counsel v. Peter Msungu & 13 Others**, Misc. Appl. No.27/2013 (2014) LCCD 1

where it was held that:-

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

With due respect to counsel for the applicant, the prayer that the application be heard despite of being filed out of time, cannot be accepted. Because the issue of limitation of time is a creature of statute and goes to the jurisdiction of the court in adjudicating the application.

That being the case, jurisdiction cannot be clothed where it does not exist or waived where it exists. As the application is out of time, this court ceases to have jurisdiction to entertain it. In that situation, I cannot assume the jurisdiction which I don't have. Sympathy to the applicant or parties to the application, cannot and will not justify the court to entertain the matter without jurisdiction.

It was open to the applicant to seek extension of time prior to filing this application. Since she didn't and proceeded to file this application while out of time, my hands are tied by jurisdictional issue hence unable to exercise whatever type of lenience. This court and the Court of Appeal has held several times that limitation of action knows no sympathy or equity. Some of the cases with that position are **John Cornel v. A Grevo (T) Ltd**, Civil Case No.70/1998, High Court (Unreported), **Barclays Bank Tanzania Limited v. Phylisiah Hussein Mchemi**, Civil Appeal No. 19 of 2016, CAT (unreported) and **M/S. P & O International Ltd v. The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020, CAT (unreported). In **Mchemi's case**, (supra), the Court of Appeal quoted with approval **John Cornel's case(supra)** that: -

"However unfortunate it may be for the plaintiff, the law of limitation on actions knows no sympathy or equity. It is a merciless sword that cut across and deep into all those who get into all those who get caught".

For the foregoing and being guided by the aforementioned Court of Appeal decisions, I hereby dismiss the application for being time barred.

Dated at Dar es Salaam this 21st day of February 2022.




B.E.K. Mganga
JUDGE

Labour Court-TZ.