

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 07 OF 2022

GIBSON WESTON KACHINGWE & 620 OTHERSAPPLICANTS
VERSUS
UNITRANS (T) LTD RESPONDENT
RULING

11th April & 27th May 2022

Rwizile, J

This ruling is in respect of the preliminary objection. The applicant filed an application for quantification and certification of the judgement of this court in Labour Dispute No. 15 of 2010 dated 6th June 2011.

In the judgement, the respondent was ordered to pay its employees, the applicants wages payable to Transport Workers sector in accordance with terms provided under GN. 223/2007. According to the judgment, wages payable were covering the period from 1st January, 2008 to 30th April, 2010, and for the period from 1st May, 2010 to 30th July, 2016, as per the terms provided under GN. 172/2010.

On 17th January, 2019, the applicants applied for execution of the decree/order. Their application, however was dismissed, because the

amount payable was not stated in the judgement and so, not approved by the appropriate authority.

They were advised by the Deputy Registrar of this court to refer the matter to the Commission for Mediation and Arbitration (CMA) for quantification and certification. The applicants applied for quantification and certification of decree/order of the Court at CMA, as directed in (MISC. APPL/CMA/MOR/23/2019). On 14th April 2020 a decision of quantifying the amount payable was issued. The respondent, was aggrieved by the decision and applied for Revision before this court, in Revision No. 29 of 2020. The application was successful, the CMA quantification order was nullified. The applicants have now filed this application.

The application is supported by the affidavit of Gibson Weston Kachingwe, as the applicant's representative. It was opposed by the counter affidavit of Iness Nangali, a Principal Officer of the respondent.

The preliminary objections are coached as hereunder;

- i. The application is hopelessly time barred.*
- ii. The application being not a representative one, is incurably defective for not being signed by the 620 unknown applicants.*
- iii. The Court has no geographical jurisdiction to try the application.*

iv. The application has no cause of action against the respondent as they are strangers to the decree, the subject matter of this application.

The hearing of the Preliminary Objection was by way of written submission. The applicants were not represented, whereas the respondent was represented by Mr. Abdon Rwegasira, learned Counsel.

Arguing the first point of objection, Mr. Rwegasira submitted that the decision in Labour Dispute No. 15 of 2010 was made on 06th June, 2011, this application was filed on 18th January, 2022. He continued to state that a period of more than ten years and seven months has lapsed counted from the date of the decree. Supporting his submission, he cited Item 21 of Part III of the Schedule to the Law of Limitation Act [Cap 89 R.E. 2019], which clearly provides for 60 days to file an application where time limit is not stated. In his view, this application has to be dismissed under Section 3(1) of the Law of Limitation Act, [Cap 89 R.E. 2019]. The counsel submitted further that Order XX Rule 21(1) of the Civil Procedure Code provides for 12 years, as time limit to execution of a decree.

Dealing with the second point of objection, the Counsel argued that the application is incurably defective for having no leave of this court of

Gibson Kachingwe to represent others. However, he added, the other applicants did not sign any document to authorise him to do so. The counsel held the view that this application is incompetent. He supported his submission with Rule 44(2) of the Labour Courts Rules, GN. 106 of 2007 and the case of **Christopher Gasper and Richard Rukizangapo and 437 Others v Tanzania Ports Authority**, Misc. Application No. 281 of 2013 (Unreported).

He stated further that Gibson Kachingwe is purporting to represent 620 other applicants without any court order. He said 620 others are not even known to this Court. To support this argument, he cited the case of **HSC Chin & 36 Others v Republic**, CA, Criminal Appeal No. 345 (Unreported), where it was held that a joint notice of appeal ought to have named all other appellants and not simply one name and others. He submitted that since the 620 other applicants are not named then the application is incompetent because they have not signed.

On the third objection, the counsel continued to argue that the cause of action arose in Morogoro Region, where parties to the application are located. He stated that the law provides for the institution of the case to be where the subject matter is situated or where the case originates. For that matter, he cited section 50(1) of the Labour Institution Act, No. 7 of

2004 read together with Rule 5 of [G.N. 106 of 2007]. He stated that there was an establishment of Morogoro Sub-Registry via High Court Registries (Amendment) Rules, 2021, Government Notice No. 638 of 2021 which has jurisdiction to entertain labour disputes arising from Morogoro Region.

For him, this Court has no jurisdiction to entertain the matter as it was filed on 24th January, 2022 long after coming into force of the G.N. No. 638 of 2021. He stated that the Court which has territorial jurisdiction will be the High Court, Labour Division at Morogoro.

Lastly, the Counsel submitted that the labour dispute No. 15 of 2010 was not between the applicants and the respondent. He stated that this application is between Gibson Weston Kachingwe & 620 others v UNITRANS (T) Ltd while, the main dispute was Tanzania Plantation and Agriculture Workers Union v UNITRANS (T) Ltd. In view of counsel, the holder of the decree is Tanzania Plantation and Agriculture Workers Union. The applicants, Mr Rwegasira insisted, are strangers to the decree. To support his submission, reference was made to section 37(1) of the Civil Procedure Code, Act, [Cap. 33 R.E. 2019], which provides that issues between the parties in the suit in which the decree is passed can only be determined by the court, not by a separate suit. He stated that the

applicants are neither parties to the original suit nor their representative in Labour Dispute No. 15 of 2010.

Here, he was fortified by the case of **Oysterbay Properties Ltd and Another v Kinondoni Municipal Council and Others**, CA, Civil Revision No. 4 of 2011. The learned counsel submitted further that the applicants have no right to enforce the decree in whatever way including an application for quantification and certification of decree to which they are not party. Mr. Rwegasira then, prayed the preliminary objections to be sustained. The Court is therefore to dismiss this application with costs.

In reply, Mr. Gibson Kachingwe representative for the other applicants, admitted that this application was filed after the lapse of period of more than ten years and seven months from the date of the decree. It was his argument that the application is not time barred. According to item 20 of Part III of the Schedule of the Law of Limitation Act, the time limit provided is twelve years. Mr. Gibson, held the view, that the Law of Limitation Act or any other law do not provide for the time limit for an application for quantification of a decree. Therefore, he added, it defeats the logic to apply twelve years as time limitation of this application. It is not, he said, an application for execution.

He continued to submit that since the delivery of the judgement on 06th June 2011, there has been consecutive applications which were entertained by this court and the Court of Appeal. such as, he added, Annexure KM.1, which was struck out on 25th July, 2013, and Annexure KM. 2, which was dismissed on 20th March, 2014. Others included an application for execution No. 325 of 2014, which was struck out, it is annexes KM.3.

It was the view of the applicants that they have been in court since that time to date and so it cannot be said, they are out of time.

It was argued in the second point, that in Misc. Application No. 307 of 2019, they were granted leave to file a representative suit. He stated that they filed a Misc. Application No. 759 of 2019 for leave, the application was dismissed for the reason of abusing court process. He stated further that they filed an appeal protesting the ruling, which is Civil Appeal No. 285 of 2021 still pending before the Court of Appeal.

He stated further that the applicants have appointed Gibson W. Kachingwe for negotiation at CMA level and in the meeting held on 10th March, 2022. He submitted that it is not practicable for all 620 people scattered all over the country to meet and sign the application for

quantification of the decree, but they are communicating through modern technology. He continued to argue that the case cited by the respondent is distinguishable. In this case, he said, other 620 people are known as per pay roll of the respondent for the years 2008 to 2016, their names and signatures were appended to the application.

On third point, he submitted that this Court has jurisdiction to entertain the application since the matter originated from Dar es Salaam High Court, Labour Division.

Dealing with the fourth point of objection, he submitted that the applicants are beneficiaries who appeared to the negotiation at company level to CMA level without TPAWU. To support his argument, he cited Rule 49(2) of [G.N. No. 106 of 2007] and state that applicants are beneficiaries and have the right to apply for quantification and certification of the decree. He stated further that the applicants in Rev. No. 29 of 2020 showed the list of all the applicants, they are therefore not strangers. He finalized by stating that the acts of the respondent's counsel are frivolous, vexatious and fraudulent as evidenced by ceaseless struggle to appeal, falsifying dates of decrees and preliminary objections which are not pure points of law, just to waste time. He therefore prayed, the preliminary objection to be overruled. This court, he said, has to take into

consideration Article 107A(1)(e) and Article 13 of the Constitution of the United Republic of Tanzania and Section 88(4) of the Employment and Labour Relations Act No. 6 of 2004.

In a rejoinder, the counsel for the respondent submitted that this application is not for execution of the decree as the provisions do not suggest so. He stated that the application for execution No. 325 of 2014 filed by the applicants was struck out on the ground that the decree is incapable of being executed as it is a declaratory decree. He stated further that the applicants could not avoid the issue of time and also for them to account for the days of delay between 04th June 2021, when the judgement was delivered and 24th January 2022 to when this application was filed.

He stated further that the applicants admitted to have a pending case before the Court of Appeal involving representation (Civil Appeal No. 285/2021). He stated that the alleged payroll is not attached to the applicant's application and cannot replace the legal requirement. He finally stated that this application is not for execution of a decree and that even the decree itself is non executable.

In determining the preliminary objections raised, I will deal with the second point of objection. For easy reference it reads as follows: -

"The application being not a representative one, is incurably defective for not being signed by the 620 unknown applicants."

The law governing representative suits is Rule 44(2) of [G.N. No. 106 of 2007] which states: -

"Where there are numerous persons having the same interest in a suit, one or more of such persons may, with the permission of the Court appear and be heard or defend in such dispute, on behalf of or for the benefit of all persons so interested, except that the Court shall in such case give at the complainant's expenses, notice of the institution of the suit to all such persons either by personal service or where it is from the number of persons or any other service reasonably practicable, by public advertisement or otherwise, as the Court in each case may direct."

In the case of **K.J. Motors & 3 Others Ltd v Richard Kishimba & Others**, Civil Appeal No. 74 of 1999, CAT at Dar es Salaam, it was held that: -

"The rationale for this view is fairly apparent. Where, for instance, a person comes forward and seeks to sue on behalf of other persons, those other persons might be dead, non-existent or either fictitious. Else he might purport to sue on behalf of persons who have not, in fact, authorised him to do so. If this not checked it can lead to undesirable consequences. The Court can exclude such possibilities only by granting leave to the representative to sue on behalf of person whom he must satisfy the Court they do exist and that they have duly mandate him to sue on their behalf."

The rationale behind application for leave of representative suit is to determine whether the applicants are indeed existing. Following the decision of the Court of Appeal which is binding to this Court, the applicant's representative has to wait for the determination the appeal in Civil Appeal No. 285 of 2021, pending before the Court of Appeal. When the issue of representation is settled. The applicants will have time to proceed with application in such a way and in such a manner, the court will have determined. In the circumstances, I find no reason to deal with other points of objection.

The preliminary objection is hereby sustained. This application therefore is struck out. Since this is the labour matter, I order no costs to parties.



A handwritten signature in blue ink, appearing to be "A.K. Rwizile".

A.K. Rwizile

JUDGE

27.05.2022

Labour Court TZ.