

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 305 OF 2021

ERNEST BERNARD MKOLELA & ANOTHER APPLICANTS

VERSUS

TUICO & ANOTHER RESPONDENTS

RULING

28th April & 17th June 2022

Rwizile, J

The main application is for setting aside and nullifying the election of the second respondent and granting of any other reliefs this Court may deem fit and just to grant. Factually, the applicants being members of TUICO contested for the position of National Chairperson in the union general election conducted on 29.12.2020. There were three contestants, the applicants and the 2nd respondent. It was stated that the 2nd respondent was an outgoing National Chairperson of TUICO and former employee of Tanesco who retired after attaining the compulsory retirement age of 60 years on 05.04.2020. On the election day, that is 29. 12. 2020, the 2nd respondent was no longer an employee of Tanesco. The election was done, the applicants were not happy with the results due to what they believed is violation of the law, union constitution and regulations.

They appealed to the *Baraza Kuu la Chama*, however their appeals were dismissed. Hence this application after exhausting all internal remedies unsuccessful.

Before the hearing of the main application started, the respondents raised 4 preliminary objections which are: -

1. *That, the application is hopelessly time barred.*
2. *That, the application is incurable for contravening the provision of Rules of the Labour Court (Labour Division) (Zonal Centres) (Establishment) Rules, G.N. No. 157 of 2010.*
3. *That, the application is incurably defective for not citation of specific provision of the law to move this, Court.*
4. *That, the application is incurable defective for contravening Rule 5 of the Labour Court Rules of 2007 G.N. No. 106*

The hearing of this application was by way of written submissions. The applicants were not represented while the respondents enjoyed the service of Mr. Noel Nchimbi, learned Advocate.

On the first preliminary objection Mr. Nchimbi submitted that the application is time barred. He stated that the general election was held on

29th December, 2020 and the hearing was on 09th June, 2021 whereby the ruling was delivered on the same day. He stated, the applicants became aware of the decision on 09th June, 2021 but they filed this application on 24th August, 2021. In his view, the applicants are time barred as the Law of Limitation provides for 60 days to file applications of this nature.

To support his submission, he cited the cases of **Dr. Ally Shabhay v Tanga Bohora Jamaat** (1997) TLR 305 at page 306 and **China Railway Major Bridge Engineering Group Company v David Mwakibete & 17 Others** where the case of **Paul Reginald Bramely Hill v Security Group Cash in Transit (T)** Revision No. 21 of 2013, was cited. He prayed, this application be dismissed.

Dealing with the second preliminary objection, it was submitted that the application is bad in law for wrongly citing the name of the Court contrary to Rule 5 of the Labour Court (Labour Division) (Zonal Centre) Establishment Rules, G.N. No. 157 of 2010. He stated that the applicants referred this court as; *In the High Court of Tanzania, Labour Division, at Dar es Salaam in steady of In the High Court of the United Republic of Tanzania, Labour Division at Dar es Salaam*. He stated that when the word shall, has been used, the function must be performed as it is intrusive

under section 53(2) of the Interpretation Act of Laws, [Cap. 1 R.E 2019]. The learned counsel also cited the case of **Yohane Ngajilo v Alliance One Tobacco (T)**, Labour Revision No. 06 of 2015 (unreported).

On the third preliminary objection, Mr. Nchimbi argued that, section 94(1)(f) of Employment and Labour Relations Act, [Cap. 366 R.E. 2019] was used by the applicants without specifying the nature of the application. Cases to support his submission include **China Railway Major Bridge Engineering Group Co. Ltd v David Mwakibete and 17 Others**, Revision No. 07 of 2019 and Rule 6(1) of the Labour Court Rules.

On the fourth preliminary objection, he submitted that the cause of action arose at Morogoro Region where the general election took place.

In his view, this Court has no territorial jurisdiction to entertain the application, since it is contrary to rule 4 of G.N. No. 157 of 2010. To support his submission, he cited the case of **Bulyanhuru Gold Mine Ltd v Gasto Myovela**, Revision No. 217 of 2011 (unreported). Then he finalized by petitioning this Court to dismiss the application with costs.

The applicants in responding to the first preliminary objection, they submitted that paragraph 9.0 (a)(iv) and (b) of Masharti ya Kanuni na

Taratibu za Uchaguzi wa TUICO, 2000 Rekebisho la tatu – 2020 and paragraph 11.2.1(i)(ii) of the Katiba ya Chama ya Mwaka 1995 Rekebisho la Tano 2015 gave the general council jurisdiction to hear and determine all the complaints and appeals from election at national level. They stated further that, it gives the special committee formed by the general committee powers to submit its opinion for final decision. The applicants submitted further that on 09.06.2021 they were summoned to appear before general meeting to prosecute their appeal. On the same day, it was argued that the report was submitted. It was submitted as well that, the applicants were informed of the general committee's decision via letters dated 24.06.2021 to Mr. Ernest B. Mkoleda and 22.06.2021 to Mr. Mambo A. Mkufu. In the applicants' view, time started to run against them from the day they were informed of the decision via letters.

On the second preliminary objection, the applicants submitted that by citing this Court as the High Court of Tanzania Labour Division is proper according to the law establishing the Court. It was argued it is in line with section 2 of the Labour Institutions Act [Cap. 300 R.E. 2019] as its enabling provision and article 108(1) of the Constitution of the United Republic of Tanzania, 1977.

It was argued as well, that form No. 1 of the schedule to the Labour Court Rules, 2007 G.N. No. 106 of 2007, has named it, "The High Court of Tanzania Labour Division".

On the third preliminary objection, it was submitted that section 94(1)(f) of the Employment and Labour Relations Act, provides for powers of the Labour Court. To support the submission, the case of **Chama cha Walimu v The Attorney General**, Civil Application No. 151 of 2008 (unreported) at pages 20-21 was referred. It was submitted further that this application was filed under section 53(1)(a) of ELRA. The applicants, then prayed, the objection be overruled for having no merit.

On the fourth preliminary objection, the applicants submitted that the 1st respondent's head office is situated at Ilala, Dar es Salaam. The 2nd respondent, it was stated resides in Dar es Salaam as per his affidavit. It was the view of the applicants that this application was filed at a place the respondents reside as per section 18(a) of the Civil Procedure Code [Cap. 33 R.E. 2019]. The argument further advanced is that since there is a lacuna in the Labour Court rules, the Court is to apply rule 55 of the Labour Court Rules for the interest of justice. The applicants held the view, that the objections have no merit. In a rejoinder, Mr. Nchimbi reiterated his submission in chief.

In determining the objections, I have to first venture into the law governing parties' union, that is Masharti, Kanuni na taratibu za Uchaguzi wa TUICO, 2000 Rekebisho la tatu - 2020. item 9.0(a)(iv) and (b) which states: -

- (a) Malalamiko/rufaa za uchaguzi zitashugulikiwa kwa utaratibu ufuatao: -*
- (i) – (iii) N/A*
 - (ii) Malalamiko/rufaa za uchaguzi wa Ngazi ya Taifa zitashugulikiwa na Baraza Kuu la Taifa.*
- (b) Kila ngazi inayoshugulikia malalamiko/rufaa za uchaguzi itaunda Kamati ya Kushugulikia Malalamiko/Rufaa hizo, na kuwasilisha maoni yake kwa vikao husika kwa uamuzi wa mwisho.*

Going by the submissions, it has been submitted that the general election was held on 29th December, 2020. The applicants were aggrieved. They appealed, where the ruling was on 09th June, 2021 delivered orally. They were served with the decision via letters dated 24th June 2021 and 22nd June 2021, respectively.

The law that governed the election in their trade union clearly states that when a party is aggrieved has to file an appeal to the General Committee.

The applicants did the same and upon receiving outcome of their appeals, they then filed this application. In the circumstances, time to file this application begun to run from the days they were served with the decisions that dismissed their appeals.

It is not disputed that the applicants were served with last on 24th June 2021 and 22nd June 2021. This application was filed on 24th August, 2021. There is no doubt that the law governing the election with the union does not provide time limit for which the aggrieved party has to file her grievance in court.

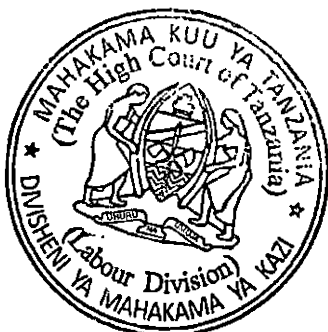
This is just in my view a lacuna since, neither the Employment and Labour Relations Act, nor the Labour Institutions Act, that provides for time limit for the aggrieved party to filed applicants in court. I therefore think, this is the right time to apply in terms of Rule 55 of the labour Court Rules to apply the Law of Limitation Act. I am saying so because there is no action of the civil nature that should be preferred in court without observing time limitation. Item 21 of Part III of the Schedule to the Law of Limitation Act [CAP. 89 R.E. 2019] which I consider relevant states;

The application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law is sixty days.

Since this is an application where time limited is not provided for, it ought therefore to be filed in 60 days from the date the decision was served on the applicants. Counting from when the decisions were served on them as I have shown before, this application was filed out of time. In the case of **Tanzania Dairies Ltd v Chairman, Arusha Conciliation Board and Isaack Kirangi** 1994, TLR 33 (HC) it was stated that: -

"Once the law puts a time limit to a cause of action, that limit cannot be waived even if the opposite party desists from raising the issue of limitation."

Under section 3(1) of the Law of Limitation Act, any suit filed out of limitation time has to be dismissed. This application is therefore dismissed. Since this objection disposes of the application, there is no reason to deal with other objections. Each party to bear its own costs.




A.K. Rwizile

JUDGE

17.06.2022