

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

MISCELLANOEUS LABOUR APPLICATION NO. 300 OF 2021

BETWEEN

**MWL. GIDDO VINTAN MWENDA.....APPLICANT
VERSUS**

THE NJOMBE DISTRICT

EXECUTIVE DIRECTOR NJOMBE.....1ST RESPONDENT

THE EXECUTIVE SECRETARY,

TEACHERS SERVICE DEPARTMENT

HEADQUARTER DAR ES SALAAM.....2ND RESPONDENT

THE EXECUTIVE SECRETARY,

PUBLIC SERVICE COMMISSION

DAR ES SALAAM.....3RD RESPONDENT

THE PRESIDENT'S OFFICE,

THE STATE HOUSE DODOMA.....4TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL

THE ATTORNEY GENERAL'S CHAMBERS-

DAR ES SALAAM.....5TH RESPONDENT

RULING

K. T. R. MTEULE, J.

24th February 2022 & 01st March 2022

This ruling emanates from Miscellaneous Application No. 300 of 2021 which was filed seeking for extension of time within which to apply for leave to file a petition for prerogative orders of certiorari and mandamus.



This application is actively opposed by respondents who raised one point of preliminary objection, to the effect that the Court has not been properly moved.

The Preliminary objection was disposed of by a way of written submissions. During the hearing the applicant enjoyed the service of Mr. Ndayanse, Advocate whereas the respondents enjoyed the service of Jenifer Msanga, State Attorney.

Supporting the preliminary objection Ms. Msanga submitted that the Court has not been properly moved for the applicant having citing Rule 56 (1) of the Labour Court Rules, G.N No. 106 of 2007 on the ground that the applicant's prayer for extension of time to apply for leave of prerogative orders and mandamus does not fall under the rules cited by the applicant to enable the Court to exercise its powers or jurisdiction.

It was further submitted by Ms. Msanga that the time limit for applying prerogative orders is provided under **Section 6 of the Law Reform (Fatal Accidents and Miscellaneous) (Judicial Review Procedure and Fees) Rules, 2014**, read together with **Rule 19 (2) of Law Reform (Fatal Accidents and Miscellaneous Provisions)** which is six months. Supporting the application, she cited the case of **John Marco v. Seif Joshua Malimbe**, Misc. Land Application No. 66 of

2019, High Court of Tanzania, at Mwanza (unreported) and the case of **Commissioner General (TRA) v. Pan African Energy (T) Ltd.**, Civil Application No. 206 of 2016 CAT (unreported). They thus prayed for the application to be struck out.

Replying to the same the applicant's Counsel concede with the objection but raised the concern regarding the meaning of preliminary objection by citing the case of **Mukisa Biscuits Manufacturing Company v. West End Distributors Ltd.** (1969) EA 696. On that reference he is of the view that what is raised by the respondent does not fall under the ambit of the meaning of preliminary objection advanced in **Mukisa's case** (Supra). On such basis he is of the view that the challenged application ought to have been amended and not being struck out. He thus prayed for the amendment.

Having considered the rivalling arguments, it is apparent in the parties submissions that there is a wrong citation of enabling provision of law. The issue before me is whether the legal error of wrong citation of the law should be cured by amendment and not striking out of the application. The Respondent averred that the Court has not been properly moved. The applicant concedes the assertion, but prayed for the application to be amended, while respondent insist for the same to

be struck out as the only remedy for not citing relevant provision (s).

Before embarking to address whether this matter needs to be struck out or allow amendment of the application, I feel obliged to firstly the propriety of this preliminary objection.

According to the applicant the point raised (PO) by the respondent does not fall under the ambit of the meaning of Preliminary objection as advanced in **Mukisa's Case** (*supra*) since it does not put the matter into an end.

The answer to this question depends on the finding to the main issue which concerns the question as to whether this matter needs to be struck out amended.

In addressing this main question, this Court find worth to refer the case of **Edward Bachwa & Another Vs. The Attorney General & Another**, Civ. Appl. No. 128 of 2006, Court of Appeal of Tanzania, at Dar es salaam, (unreported), where the Court held that:-

"wrong citation of the law, section, subsection or non citation of the law will not move the court to do what is asked and renders the application incompetent."

In this application, the matter of mandamus and prerogative orders are

not covered by Rule 55(1) and (2) of the Labour Court Rules. The said Rule provides:-

"55 (1) Where a situation arises in proceedings or contemplated proceedings which these rules do not provide the Court may adopt any procedure that it deems appropriate in the circumstances

(2) In the exercise and performance of its powers and functions, or in any incidental matter, the Court may act in a manner that it considers expedient in the circumstances, to achieve the objects of the Act and, or the good ends of justice".

From the above provision, it is apparent that the instant application is not covered by the cited provision. The applicant was supposed to cite **Section 14 (1) of the Law of Limitation Act, Cap 89 R.E 2019** which provides for extension of time, Section 6 of the Law Reform (Fatal Accidents and Miscellaneous) (Judicial Review Procedure and Fees) Rules, 2014, read together with Rule 19 (2) of Law Reform (Fatal Accidents and Miscellaneous Provisions) which provides time limit of six months for this matter and Rule 55 of G.N No.106 of 2007 which allow this court to adopt other procedure, but he failed to do so.

In the case of **Marky Mhango and Others v. Tanzania Shoe Co. Ltd. and Another**, Civil Application No. 37 of 2003, Court of Appeal of



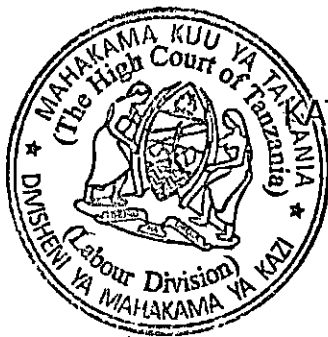
Tanzania, at Dar es salaam, (unreported) at page 7 and 8, it was held that:-

"In my view, the situation in the instant case is even worse. It was not a matter of wrong citation of the rule, but no rule at all was cited... In the circumstances, I agree with Mr. Maro, Learned Counsel for the respondent that the application was rendered incompetent on account of non-citation of the applicable provision of the rules in support of the application... In the event, for the foregoing reasons the preliminary objection is sustained. The application being incompetent, is accordingly struck out with costs."

From the above authority I have no hesitation to say that the effect of not citing relevant provisions in filing any application before the Court, is for the same to be struck out. For that reason, the Preliminary objection is upheld, and this application is consequently struck out. No order as to cost.

It is so ordered.

Dated at Dar es Salaam this 01st day of March, 2022.



ATARINA T. REVOCATI MTEULE

JUDGE

01/03/2022