

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISC. APPLICATION NO. 111 OF 2023**

**BETWEEN**

**MINNAH SAIBULL ..... APPLICANT**

**VERSUS**

**PREVENTION AND COMBATING OF**

**CORRUPTION BUREAU ..... 1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Date of last Order:** *16/08/2023*

**Date of Ruling:** *06/09/2023*

**MLYAMBINA, J.**

The legal controversial point in this application is about the remedy for time barred applications. Should it be dismissed or struck out? In order to address such issue, it is important to appreciate the brief facts of the case. The Applicant herein was employed by 1<sup>st</sup> Respondent since 16<sup>th</sup> August, 2005 on the position of an Investigation Officer. The Applicant was terminated from employment after being charged and found guilty with the allegations of soliciting and accepting corruption of TZS 4,950,000/= on 16<sup>th</sup> December, 2020. The Applicant lodged the appeal to the Chief Secretary on 28<sup>th</sup> December, 2020. She alleged that the verdict was not issued to her up to 11<sup>th</sup> August, 2021 despite of several follow up.

Thereafter, the Applicant referred the matter to the Commission for Mediation and Arbitration 'herein CMA'. Later on, the matter was withdrawn from the CMA for lack of jurisdiction. Then the Applicant decided to file the present application for leave to apply orders of Mandamus and Prohibition.

In response to the application, Mr. Boaz Msoffe learned State Attorney for the Respondents raised a preliminary objection to the effect that:

*The application is time barred for being filed out of 6 months' time provided for under Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN. No. 324 of 2014.*

When the matter was called for hearing on 16<sup>th</sup> August, 2023, Mr. Raymond Mweli, the Applicant's personal representative conceded to the raised preliminary objection. On his part, Mr. Msoffe urged the Court to dismiss the application for being filed out of time. He submitted that *GN. No. 324 of 2014 (supra)* does not provide for remedy on time barred application. He also cited the case of **Barclays Bank Tanzania Limited v. Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016, Court of Appeal at Dar es salaam (unreported), in which the Court

decided that in circumstances like of this case, *Section 3(1) of the Law of Limitation Act [Cap 89 Revised Edition 2019]* 'herein LLA' comes into play as it is decided at page 15 of the referred decision. He therefore urged the Court to dismiss the matter on the ground that the law of limitation knows no sympathy or equity.

In response, Mr. Mweli prayed for the Court to struck out the matter on the ground that the Applicant is entitled to the right to be heard (the principle of natural justice). He stated that the delay of filing this application emanated from the illegalities of the administrative decision in the due course of handling disciplinary proceedings against the Applicant. He referred the Court to *Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977* as amended from time to time. He also cited *Section 95 of the Civil Procedure Code [Cap 33 Revised Edition 2019]* and *Article 107A (2)(e) of the Constitution (supra)*.

Further, Mr. Mweli submitted that in matters of justice the Courts of law are mandated to sacrifice procedure but Courts of law cannot sacrifice justice for the sake of procedural rules. To support his submission, he cited the case of **Re Coles Ravenshear Arbitration** 1907 KB 1.

As pointed out earlier, both parties are in agreement that the matter at hand is time barred. The contention to be determined by the Court is the remedy for time barred filed applications. The application before the Court is for leave to apply for the orders of Mandamus and Prohibition. As rightly submitted by Mr. Msoffe, the application of this nature is filed within six months as per *Rule 6 of GN. No. 324 of 2014 (supra)* which is to the effect that:

The leave to apply for judicial review shall not be granted unless the application for leave is made within six months after the date of the proceedings, act or omission to which the application for leave relates.

In the instant matter, the final decision to terminate the Applicant was issued since 12<sup>th</sup> April 2021, whilst the Applicant filed the present application on 3<sup>rd</sup> May, 2023. Therefore, the Applicant delayed to file this application for two years without an extension of time to file the same. It is the Court's position which have been emphasized in numerous decisions that parties must file their claims within the time prescribed by the law or granted by the Court. In the landmark case of **Tanzania Fish Processors Ltd v. Christopher Luhangula**, Civil Appeal No 161/1994 Court of Appeal of Tanzania, at Mwanza Sub Registry (unreported) 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.

Again, in the case of **Dr. Ally Shabhay v. Tanga Bohora Jamaat** [1997] TLR 305, 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.

As rightly submitted by Mr. Msoffe, *GN. No. 324 of 2014 (supra)* did not provide for the remedy of time barred application. Thus, the Law of Limitation comes into play. The case of **Barclays Bank Tanzania Limited (supra)** cited with approval the case of **Hezron M. Nyachiya v. Tanzania Union of Industrial and Commercial Workers and Another**, Civil Appeal No. 79 of 2001 (unreported), by holding that:

... although *the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance* set the time limit for instituting actions to be six months, but did not provide for the consequences of filing a matter out of time, *section 3*

*of the Act* was applicable in dismissing the petition. In view of that position of the law, it is our conclusion that the learned High Court Judge should have resorted to *section 3(1) of the Act* to dismiss the complaint instead of striking it out as she did.

For easy of reference *Section 3(1) of LLA (supra)* provides as follows:

Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence.

Much as the Court would have wished to consider the Applicant's allegation of the right to be heard, the Court hands are tied up to the provisions of the law. In the case of **John Cornel v. A. Grevo (T) Ltd**, High Court Civil Case No. 70 of 1998 (unreported) as cited in the case of **Nile Healthcare Ltd T/A Uhuru v. Filbert John Mpogoro**, Labour Revision No. 07 of 2022, High Court Mwanza Sub Registry (unreported) it was held that:

law of limitation on actions, knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web.

I take note of four points. *One, Article 13(6)(a) of the Constitution of the United Republic of Tanzania (supra) which requires* when the rights and duties of any person are being determined by the Court or any other Agency, to entitle such Applicant with *inter alia* a fair hearing. *Two, Section 95 of the Civil Procedure Code (supra) gives inherent power to this Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the Court process. Three, Article 107A (2)(e) of the Constitution (supra) prohibits any law enacted by any authority in the United Republic to make any provision that is discriminatory either of itself or in its effect. Four, Mr. Mweli's call to the Court to do away with technicalities. However, as stated in the case of **Tanzania Fish Processors Ltd (supra)**, the issue of time limitation touches the Court's jurisdiction to determine the matter.*

It is the further observation of the Court that the right to be heard for the Applicant would be applicable only if the Applicant had run a mental incapacity due to any injury or any lawful cause or was a minor by the time six months had expired. In this case, however, there is no such claim by the Applicant.

I further take note of Mr. Mweli's submission on the reason for the delay to file the present application. With due respect, however, those reasons ought to have been adduced in an application for extension of time and not in this application.

In the result, the preliminary objection raised by the Respondent's counsel is hereby upheld. Thus, the application is dismissed for being filed out of time. Being a labour matter, no costs are awarded.

It is so ordered.



**Y. J. MLYAMBINA**  
**JUDGE**

**06/09/2023**

Ruling delivered and dated 6th day of September, 2023 in the presence of learned Counsel Raymond Mweli for the Applicant and learned State Attorney Boaz Msofe and Mathew Fuko for the Respondents. Right of Appeal fully explained.



**Y. J. MLYAMBINA**  
**JUDGE**

**06/09/2023**