

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

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISC. APPLICATION NO. 231 OF 2023**

**BETWEEN**

**ROGERS MUTALE ..... APPLICANT**

**AND**

**STAMIGOLD COMPANY LIMITED ..... RESPONDENT**

**RULING**

Date of last Order: *20/10/2023*

Date of Ruling: *07/11/2023*

**MLYAMBINA, J.**

This ruling is in respect of the preliminary objections raised by the Respondent's counsel against an application for re-enrolment filed by the Applicant herein. Before the Court the Applicant filed an application for re-enrolment of the *Execution No. 25 of 2021* which was struck out for want of prosecution on 05/07/2021 before Hon. A. Teye, Deputy Registrar. The Respondent strongly opposed such application through counter affidavit, notice of opposition together with the notice of preliminary objection on the following points of law:

- i. That the application is bad in law for being time barred contrary to Item 21 Part III to the Schedule of the Law of Limitation Act [Cap 89 Revised Edition 2019]*

- ii. *That, the application is bad in law and incompetent for wrongly moving the Court for an order of re-enrolment of a dismissed application for Execution No. 25 of 2021 contrary to Rule 36(2) of the Labour Court Rules GN. No. 106 of 2007 (herein LCR).*

In range of decisions, the Court decided that the question of time limitation in instituting suits is elementary which needs to be first considered by the Court when approached by any application. This is the Court's position in the case of **Tanzania Fish Processors Ltd v. Christopher Luhangula**, Civil Appeal No 161/1994 Court of Appeal of Tanzania at Mwanza sub registry (unreported), in which it was 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.

Since the first objection touches the jurisdiction of the Court to determine the matter, I will start to determine it first ahead of the rest. The application was argued by way of written submissions. Both parties filed their submissions as dully scheduled by the Court. Learned counsel Mrs. Conseta Boniphace, appeared for the Applicant, whereas Ms. Happiness Nyabunya, was for the Respondent.

Arguing in support of the preliminary objection, Ms. Nyabunya submitted that the application is legally flawed for being time barred contravening *Item 21, Part III of the Schedule of the Law of Limitations Act [Cap 89 Revised Edition 2019]* (herein LLA). She argued that the labour laws does not provide time limit for filing an application for re-enrolment, under such circumstance, the general law, LLA applies. She went on to submit that the limitation of filing this application is 60 days as in accordance with *Item 21 Part III to the Schedule of LLA*.

It was submitted by Ms, Nyabunya that the impugned application was dismissed on 05/07/2021, whereas the present application was filed on 14/08/2023 which makes a delay of two years. She strongly submitted that the application is time barred and no extension of time has been sought to refer the matter. To support her position, Ms. Nyabunya referred the cases of **Daudi Godluck Sollo v. Dar es salaam Institute of Technology Saccoss Ltd**, Misc. Application No. 197 of 2022 (unreported); **Tanzania Shipping Agencies Corporation v. Lucas Machimu & 3 Others**, Revision Application No. 108 of 2013 (unreported), **Anand Surendra Malam v. Lake Cement Limited**, Revision No. 187 of 2021 (unreported); whereby in all cases, the Court

applied the law of limitation to dismiss applications which were filed out of time.

In response to the preliminary objection, without wasting time of the Court, Mr. Bonoplace conceded to the preliminary objection and prayed to withdraw the application with leave to seek extension of time to file restoration of *Execution No. 25 of 2022*.

As rightly submitted by Ms. Nyabunya, the labour laws do not provide for time frame within which to file an application for re-enrolment. In such circumstance, pursuant to the provision of *Rule 55 of the LCR the Court will resort to the provisions of LLA*. This is the Court's position in numerous decisions including the case of **Daudi Godluck Sollo** (supra) where it was held that:

... labour laws are silent as to time limit within which to file an application for re-enrolment of application for execution. That lacuna can be cured by recourse to the provisions of *Rule 55(1) of the Labour Court Rules, 2007* that requires adoption of any procedure that the Court deems appropriate where a situation arises in proceedings or contemplated proceedings which the rules do not provide. In our case, *Item No. 21 Part III of the Law of Limitation* is relevant. The same provides for the 60 days' time limitation to file an application where no period has been provided for under the law.

I subscribe to the above position, the application for re – enrolment of an execution has to be filed within 60 days from the date the application was struck out. *Execution No. 25 of 2021* was dismissed for want of prosecution on 05/07/2021 whereas the application for re-enrolment was filed on 12/08/2023. The law of limitation specifies the statutory time frame within which a person may initiate a legal proceeding or a legal action can be brought. If a suit is filed after the expiry of the time prescribed, it will be barred by the Law of Limitation. In the present application despite being aware that the matter is out of time the Applicant did not bother to file an application for extension of time before filing this application. The law will assist only those who are vigilant with their rights and not those who sleep upon it as a latin saying goes *vigilantibus non dormientibus Jura subveniunt*. Under the circumstance, the Applicant will have to face the law of limitation. This is the Court's position in the case of **Dr. Ally Shabhay v. Tanga Bohora Jamaat** [1997] TLR 305 in which 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.

Again, in the case of **John Cornel v. A. Grevo (T) Ltd**, High Court Civil Case No. 70 of 1998 (unreported) cited in the case of **Nile Healthcare Ltd T/A Uhuru v. Filbert John Mpogoro**, Labour Revision No. 07 of 2022, High Court Mwanza 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 have noted the Applicant's prayer of striking out the application. It is my view that such prayer cannot stand. It has long been determined that the remedy for time barred application is dismissal as stated under *Section 3(1) of the LLA* and emphasized in numerous decisions including the case of **Hezron M. Nyachiya v. Tanzania Union of Industrial and Commercial Workers and Another**, Civil Appeal No. 79 of 2001, Court of Appeal of Tanzania at Dar es Salaam (unreported) cited with approval in the case of **Barclays Bank Tanzania Limited v. Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016, Court of Appeal of Tanzania at Dar es Salaam (unreported).

In the result, the first preliminary objection raised by the Respondent's counsel is hereby upheld. Thus, the application is dismissed from the Courts registry for being filed out of time. It is so ordered.



**Y. J. MLYAMBINA**

**JUDGE**

**07/11/2023**

Ruling delivered and dated 7<sup>th</sup> November, 2023 in the presence of Mrs. Conseta Boniphace for the Applicant and in the absence of the Respondent. Right of appeal explained.



**Y. J. MLYAMBINA**

**JUDGE**

**07/11/2023**

