

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 67 OF 2021

(Arising from the Ruling and Drawn order of this Court in Civil Case No. 289 of 1998

dated 25th August, 2017)

(R. K. Sameji, J.)

FIDELIS M. MASEKE 1ST APPLICANT
LEONCE G. MKIWA 2ND APPLICANT
JOSEPH NTOGWISANGU 3RD APPLICANT
ADALAIDE MARIJANI 4TH APPLICANT
JOSEPH D. URIO 5TH APPLICANT
MARCEL J. MAUNGO 6TH APPLICANT
JUSTINE MSUKA 7TH APPLICANT
AUGUSTIN MZEE NGUMA 8TH APPLICANT
ARTHUR ORIO 9TH APPLICANT
MICHAEL METEALI 10TH APPLICANT

VERSUS

PERMANENT SECRETARY MINISTRY OF FINANCE 1ST RESPONDENT
THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

Date: 12/12/2022 & 02/02/2023

NKWABI, J.:

The applicants' suit was dismissed by this Court, (R. K. Sameji, J., as she then was) on 25th August 2017 after upholding a preliminary objection raised by the respondents. It found that this Court has no jurisdiction to entertain the suit. Her Ladyship was of the firm view that at the time the applicants

instituted the suit in this Court in 1998, the Industrial Court of Tanzania was in existence since 1997, thus the applicants ought to have filed the suit in that Court. Each party was ordered to bear their own costs. The applicants were the employees in the Ministry of Finance, but their employments were terminated for public interest. The applicants are now seeking for the following orders:

1. Extension of time within which the applicants may file an application for review of the ruling of this Court dated 25/08/2017.
2. Any other Order(s) the honourable Court deems fit and necessary to grant.
3. Costs of or incidental to this application be in the cause.

The chamber summons is brought under section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2019. It is supported by the affidavit of the applicants. The application is resisted by the Respondents who filed a counter-affidavit duly sworn by Mr. Charles Mtae, learned State Attorney.

The application was disposed of by way of written submissions. Submissions for and against this application were filed save for rejoinder submission. Dr. Chacha Bhoke Murungu, learned counsel drew and filed the submission for

the applicants. The respondents were represented by Mr. Charles Mtae, learned State Attorney. I profoundly thank them for their powerful submissions.

Illegality is cited by the counsel for the applicants to be found in the decision of this Court. It is the argument of the counsel for the applicants that that is sufficient cause for extension of time for the applicants to file an application for review of the decision of this Court.

The counsel for the applicants is arguing that the ruling of this Court was erroneous as the suit ought not to be dismissed since dismissal presupposes the matter has been heard on merits, it could only be struck out as it was in preliminary stage. He is also of the view that the decision was given *per incurium*. He exemplified **Zaid Sozy Mzimba v Director of Broadcasting, Radio Tanzania Dar-es-Salaam & AG**, Civil Appeal No. 4 of 2001 in that all suits against the government and for which the Attorney General is joined as a necessary party must be filed in the High Court. He also fortified his position by the case of **VIP Engineering and Marketing Limited and Two Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006:

"It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 (now Rule 10) of the Court of Appeal Rules regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay. ..."

In reply submission, the counsel for the respondents is of the view that the application is devoid of merits because it failed to meet all the conditions laid down in **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). He insisted the illegality ought to be apparent on the face of the record, in this case that is not the case. He pointed out that the applicants' dispute is of labour nature which the Industrial Court had the jurisdiction. He backed his argument by **Tambueni Abdallah & 89 Others v. National Social Security Fund**, Civil Case No. 310 of 1998:

"... trade dispute has to follow the prescribed procedure and there is no room for going to the High Court straight. ... the

High Court has no original jurisdiction to entertain trade disputes”

I have examined the above alleged illegalities; it is evident and it is my firm view that the alleged illegalities are not apparent on the face of the record and are of no sufficient importance. Further, they will require a long drawn-out argument to establish hence the alleged illegalities do not amount to sufficient cause for extension. As shown above, there are two case laws with different views on the matter. I accept the arguments brought forward by the learned State Attorney. I also concur with the view of the State Attorney that where a suit is found to have been filed in a court which has no jurisdiction the remedy is not to strike it out rather the remedy is to dismiss it for want of jurisdiction. So, the alleged illegality is not apparent on the face of the record.

The applicants are also invoking technical delay by stating that the delay is caused by pursuing their remedies in the Court of Appeal and this Court. Finally, they filed this application after getting advice from their lawyer. The counsel for the applicants remarked on that respect as follows:

"The applicants were constantly seeking redress in courts which amounts to technical delay caused by the court itself ..."

The learned State Attorney for the respondents retorted that they are of a different view. He stressed, the argument is totally misdirected as there is neither technical delay nor the Court is to blame. It was then forcefully submitted thus:

"... since the instant application is another attempt by the same Applicants against the same Respondents whereby, the former apply for extension of time, they cannot not now come forward and justify reasons for extension by accounting for extension for whatever reasons be illegality or account for each day while they previously were heard by the same court on the same points of laws. To us this is tantamount to an abuse of courts process."

I am of the same view as the above view of the learned State Attorney. If I grant this application, one would be attempted to wonder why the law has parted company with common sense and that parties may circumvented the decision of the Court easily. The applicants appeared before B. S. Masoud, J. for extension of time and the consolidated applications were dismissed

with costs. I wonder how can the applicants manage to account for each day of the delay or provide a good cause for extension in this application in the circumstances.

That said, I find that the applicants have failed to demonstrate sufficient cause for extension of time and have failed to account for each day of the delay. I dismiss the application. I make no order as to costs for the reason that the respondents did not press for the same.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 02nd day of February, 2023.




J. F. NKWABI
JUDGE