

TANZANIA / JUDGMENT

APPLICATION NO

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TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA LABOUR DIVISION AT DAR ES
SALAAM APPLICATION NO. 6471 OF 2024 CASE REFERENCE NO. 202403251000006471
SERENGETI BREWERIES LIMITED APPLICANT Versus HECTOR SEQUIRAA
RESPONDENT

RULING

OPIYO, J. The applicant in this matter filed this application on 25th March 2024 prays for extension of time for applicant to lodge Notice of appeal to the court of appeal out of time against the judgment and decree of this court and (Mipawa, J as he then was) in Revision Application No. 287 of 2015 dated 2nd June, 2015. The application is preferred under section 14(1)&(2) of the law Act, Cap RE 2002, Rule 24 (1) and (2)(a)(b)(c)(d)(e)(f), 3(a)(b)(c) and

- (d) of the Labour Court Rules, GN No. 106/2007. The application is supported by the affidavit it of Lucia Minde, applicants Principal Officer, Company Secretary. The application is vehemently objected to by the respondent through his counter affidavit filed in court on 3rd May 2024, praying for the dismissal of the application on averment that granting this application will be erroneous and unjust to the Respondent, a decree holder, who has been doing nothing else than waiting for 9 years on the applicants volition to prosecute his appeal on the respondent's detriment and allowing abuse of courts process. In this matter the applicant was represented by Senior counsel Alex Mgongolwa while the respondent was originally represented by Melchzedek Joachim, Learned Counsel at the time of filing pleadings and arguing the matter by way of written submissions. However, at some point, the respondent withdrew his instructions and continued appearing in person. The application was argued by way of written submissions. However, before the matter was finally determined when the court was in the course of composing ruling, it come across a preliminary objection to the effect that the application is incompetent for being brought under a wrong provision of the law. The said objection was brought by a way of a letter by the respondent dated 3rd July, 2024 that was filed in court on 8th July, 2024 going by the following words inter alia; "...As I was going through the High Court Labour Ruies ... I have noticed that applicant can only move the court by other laws when the Labour Rules do not provide, otherwise the Labour Ruies take precedent (sic),. Going by the provision cited in the application for extension o f time I have noticed that Rule 56 o f Labour is nowhere

captured only section 14 of the law of limitation Act Cp (sic) 89. I state that the invocation of the law of limitation Act come only when there is Lacuna in the Rules. I therefore pray that this Hon. Court put this point of Law into consideration by trucking out the application for failure to properly move the court for sought orders." At the time of revelation, both parties had already filed their written submissions as rejoinder was filed in 22 May 2024. The court had a debate whether to take up the objection or not as the parties had not argued the same before arguing on the merits of the application. I resolved to invite the parties to address the court on the objection when they appeared for ruling on 20/8/2024. At the time the respondent had already withdrew the instructions from his former advocate, so he was appearing in person. The Applicant was on that day represented by Rujaina Mohamed, Learned counsel. In addressing the court, the respondent submitted that when he was going through former application between them, application no. 402 of 2017 that was before Hon. Mashaka, 1 (as. she then was) which was a similar application to current one, since it was also seeking for extension of time to file notice of appeal by the applicant previously, he found that, it was supposedly filed under rule 56 of the Labour Court Rules, whereas, the current application has been preferred under section 14 of the Law of Limitation Act. That, he raised such concern to his then advocate's knowledge, but the advocate brushed it out on the basis that the issue was not fatal or was unimportant. This made him to take it upon himself to bring it to the attention of the court, by filing it by way of a letter to the e-case management system. That, when he went to serve the applicants through their advocate, one Mr. Alex, Mgongolwa, he was told that this was an outdated law. He further submitted that, he has read online a number of court of appeal rulings where the court ruled that the labour court has its own rules. He therefore believes that, those rules of this court have enabling provision for preferring the application in question, which as per his letter is rule 56 of the Labour Court Rules, thus the provision of the Law of Limitation Act cited by the applicants in this case is not applicable. He insisted that, being not an advocate, he did not know that point of objection has to be brought in a certain manner, that is the reason, he raised the point in the way he did by writing a letter. His prayer therefore, is for the application be struck out. In reply, Ms. Rujaina Mohamed, learned Counsel submitted that, as much as they accept the claim by respondent that he had served them with a letter in which he raised the objection, which they refused. That, their main reason of refusing it was that, the respondent was abusing the court procedures by raising objection in a way that is not recognized under the law and innovating the procedure that is legally not under the law. She contended that, in as much as the respondent is claiming he is a layperson, but he could take legal research to know that the provisions the cited were not appropriate to move the court, he cannot use ignorance of the law as an excuse, for not following procedures set by the law in bringing matters to court. She continued that, after all, at the time the letter was filed in the system, the respondent was enjoying the legal services of his former advocate. They therefore take note that; the respondent was represented in court and he was not standing as a lay person. She in turn argued that, under the law a wrong cannot be cured by creating another wrong. Therefore, for them determination of this letter on merits should entail the respondent bringing the same in a proper procedure, otherwise a Pandora box

will be opened which will not fair to the court. She therefore prayed that, this letter be disregarded since the said letter cannot move the court to give on order of either striking out or dismissing this application. Respondent in rejoinder stated that, he is a lay person not an advocate, therefore, he cannot understand the details regarding wrong citation, but when this application was filed under rule 14 of the law of limitation, instead of rule 56 he was surprised. So, he just made cross verification with the former application no 402 of 2017 and noticed the difference. That, when he raised it to his former advocate, who told him it was insignificant, and he decided to bring it on his own and started questioning^ integrity of his advocate. That, when the same was refused by the other side, increased his suspicion. Parties' submission on the matter has been painstakingly considered. I am aware that preliminary objection has to be raised in known procedure by way of notice of preliminary objection. And it is clear that, in our case the objection on point of law was not brought by way of notice, rather by way of a letter by the respondent. The question is now how fatal is the bringing the objection in the way it was brought. It is also a common understanding that, a preliminary objection can be raised by the court suomotuor by either party, but whoever raises it, it has the same weight. That was well stipulated in the case of Tryphone Elias and Ryphone Elias and antoher v. Majaliwa Daudi Mayaya, Civil Appeal No. 186 of 2017 Court of Appeal expressed their opinion on the weight of the preliminary objection by stating at page 5 that. 'It is imperative at this juncture to point out in passing that whether a legal point o f objection is raised by a party by way o f notice o f preliminary objection; or by the court suo motto, the weight to be attached to any such matter is the same, thus we have reservation on Mr. Nasimire's argument that Shabani Fundi's case (supra) may be distinguishable on that fact alone " In my considered view the gist of requiring objection to be raised by way of notice of preliminary objection is to let it known to the parties beforehand as it is to be considered prior to going to the merits of any application it intends to affect. Now, was bringing the objection in the way the respondent did fatal. It is on record that the applicant was represented at the time the letter was filed on the system. It is also on the same record that the respondent had brough the issue to the attention of his advocate but he ignored it as insignificant. And even when he tried to serve the other party after taking personal initiative to bring it to the attention of the court by filing it in the system, service was refused. This shows that, respondent's representation had no hand in the letter in question. I understand this is unprocedural, but instead of the applicant counsel accepting service and raise to the court on unusual way the objection was brought to court by the party who was at the time represented, he refused service. In my view, such refusal is tantamount to assuming court powers of making decision over the matter as being unimportant or not fatal. I have a strong conviction that the applicant's counsels' act of refusal of service was also unproceduraX In as much as the applicant could refuse or in accept service, this court have no such option, as the letter was already in the court's digital records since 3rd July 2024. The issue is whether the preliminary objection that was brought to the attention of the court by way of a letter is worth considering. The opinion of applicant's counsel is that, as the objection was raised in a way that is not recognized by the law, it should be rejected. With due respect, based on the above authority, regardless of the

way the objection on point of law, that could as well be raised by the court suo motu and still hold the same weight, came to the attention of the court, it is worth considering. According to the above authority the weight of the objection is the one to be looked into rather than the way the same was brought to court, provided that the same concern can as well be raised by the court suo motu as noted above. This is especially if the objection is the one that goes to the root of the matter like the one at hand which in essence, determines the competency of the matter before the court. When faced by objection touching on its jurisdiction the court cannot proceed determining application on merits until the determination of the jurisdiction matter raised. The same was held in the case of Patrick William Magubo vs Lilian Peter Kitili, Civil Appeal No. 41 of 2019, CAT at Mwanza at pages 9-10 which held: - "From the above extract and considering the fact that jurisdiction of courts is conferred and prescribed by law, it is therefore a primary duty of every court, before venturing into a determination of any matter before it, to first satisfy itself that it is vested with the requisite jurisdiction to do so," It is therefore my considered view that, such unprocedural bringing of objection on point of law, by the lay person who was refused attention by counsels of both sides, that could be as well be brought by the court suo motu is not necessarily fatal to the extent of being capable of right rejection. For the reasons the court feels obliged to consider the objection, although it came in its knowledge in unusual way. It is my considered view that, prudence would demand not just ignoring it as if it was not brought to the court's attention, while it is already in the court digital records. The gist of the objection is that the application has been brought under a wrong provision of the law. As the applicant failed to submit on the merits of the objection the issue remains unopposed. It is now upon the court to examine the matter within the premises of the respondents' contentions only. As noted above, the application is brought under provision of Section 14(1)(2) of Cap 89 and Rule 24 of Labour Court Rules. Examining the provisions under which the application has been brought, it is true that the same are not enabling provisions for the application at hand. The issue is now, the effect of non-citation or wrong citation of the enabling provision. In the case of Godfrey Kimbe V Peter Ngonyani, Civil Appeal No. 41 of 2014, the court of appeal concerned with the inattention of the High Court regarding the provision under which the application is brought stated that:- "On our part, we are certain that had the High Court paid commensurate attention to the provisions under which the application for extension of time to file an application for leave to appeal to this Court was made, it would not have proceeded to entertain and hear it. As rightly submitted by the respondent, the applicant ought to have taken his application under section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 of the Revised Edition, 2002. Having made the application for extension of time under the wrong provision of the law, the High Court (Land Division) ought to have struck out that application for being incompetent. It is trite law that wrong citation of the correct section but a wrong subsection. In that case the Court of Appeal cited the case of China Henan International Cooperation Group v. Salvand Rwegasira, Civil Application No. 22 of 2005 CAT (unreported) where gravity of this error was succinctly stated in the following words:- "... Here the omission in citing the proper provision of the rule relating to a reference and worse still the error in citing a wrong and inapplicable rule in support of the

application is not in our view, a technicality falling within the scope and purview of Article 107 (2) (e) of the Constitution. It is a matter which goes to the very root of the matter. We reject the contention that the error was technical." The reason of holding the situation as more serious is because, wrong citation of the law, or non-citation of the law will not move the court to do what it is asked to do the fact which renders the application incompetent before it as they continued to state in the same case. The two above cases are relevant in our case in which a wholly inapplicable provision of the law was cited. In the circumstances I am duty bound to strike out the application for wrong citation of the wrong provision of the law. M. P. OPIYO, JUDGE 21/8/2024

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