

TANZANIA / JUDGMENT

# 20121017 TZHC Dar es Salaam

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TZHCDECIDED  
17 October 2012

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IN THE HIGH COURT OF TANZANIA-" (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM CIVIL REVISION NO. 41 OF 2011 (Revision from Temeke District Court Employment Cause No. 2 of 2010) THE MANAGER, STEEL STRUCTURE SYSTEMS LTD . ..... APPELLANT Versus -ISSA \_MNYAWA .... ■■ ..... 1 ST RESPONDENT JAMILA MTUNZI: ...,~· ..... ~ ..... 2ND RESPONDENT RAJABU SIMBA ....=..... 3RD RESPONDENT Date of Judgment: 17/10/2012

## JUDGMENT

F. Twaib, J: ..,> Issa Mnyaw'a, Jamila Mtunzi and Rajabu Simba ("the Respondents") first sued the Applicant, Steel Structures & Systems Ltd. at the Kisutu .Resident Magistrate's Court in Employment Cause No. 24 of 1998. That was on 1th February 1998. The matter went up to the Court of Appeal, which qua~hed all proce\_edings on grounds that the original trial at the RM's Court was presided over by a Principal District Magistrate, who lacked jurisdiction .. Instead of ordering a retrial before a Resident Magistrate, which the cdurt of Appeal would normally have done in such a case, the Court advised Issa Mnyawa and his co-litigants to contact the labour officer responsible on Page 1 of 5 how to go about pursuing their claims. The words of the Court of Appeal were as follows: "We have toyed over the idea whether or not to order a retrial. However, in view of the recent changes in the labour laws, we have hesitated to do so. Instead, we advise the Respondents to get in touch ·with the labour officer who shall be better placed to know where to take their grievances under the present labour law regime." Thereafter, on 30 th December 2009, the Labour Officer filed, on behalf of the Respondents, Employment Cause No. 2 of 2010 in the Temeke District Court. It did so pursuant to the Employment Act, Cap 366, R.E. 2002. It is common ground that that Act was repealed by the Employment and Labour Relations Act, No. 6 of 2004. However; .the date of its coming into force, which is significant, has been stated differently by both parties. Mr. Kilindu said it was 4th June 2004. The Respondents said it was 20th December 2006. The latter is the correct date, going by Government Notice No. 1 of gh January 2007. At the District Court, Mr. Kilindu, learned Counsel for the Applicant, raised a preliminary objection, on two issues: Whether the District Court had jurisdiction,. and whether the suit was within time. The learned District Magistrate overruled him on. both. Mr. Kilindu complained to the Hon. Principle· Judge in writing. The Principal Judge ordered that a file for revisional proceedings be opened in this Court. By consent, the matter has been argued in this Court by way of written submissions. It is Mr. Kilindu's view that when the Court of Appeal made

its decision on 4th December 2009, it was aware that the Employment Act, Cap 366, had been repealed, which was why it did not order a new trial under that Act. According to him, the Labour Officer was wrong in Page 2 of 5 filing the matter in the District Court under the repealed law, contrary to the advice of the Court of Appeal. In their reply submissions, the Respondents relied on item 13 of the 3rd Schedule (savings and transitional provisions) of the Employment and Labour Relations Act. Item 13 states that disputes which were not finalised after the coming into force of the Act should continue to be dealt with under their respective repealed laws for a period of three years. They set the cut-off date at 5th January 2010. Respondents thus argue that the District Court could still exercise jurisdiction in this matter despite the repeal of the Employment and Labour Relations Act, which was filed on 30th December 2009. They opine that it was filed within the three year period, and was therefore within time. There is no need to put certain matters straight at this point. As earlier mentioned, the Respondents themselves correctly stated the date of coming into force of the Employment and Labour Relations Act as 20th December 2009. Yet, they argue that having filed it on 30th December 2009 (ten days beyond the three years statutory deadline) was within time. I do not think so. I am of the decided view that the filing of Employment Cause No. 2 of 2010 at Temeke District Court (the subject of these proceedings) was done beyond the cut-off date. Hence, the Respondents cannot rely on item 13. Even if, for argument's sake, the filing is deemed to be a continuation of earlier proceedings, the same could not be continued pursuant to item 13 beyond 20th December 2010. In terms of section 14 of the Interpretation of Laws Act, Cap 1 (R.E. 200.2), the date of commencement of an Act is the date of its publication in the Gazette or, if it is provided either in the Act or any other written law, that it shall come into operation on some other date, on that date. The Employment and Labour Relations Act was pronounced to have come into operation on 20th December 2006. The three years saving or transition period expired on 20th December 2009. The latter is, therefore, the date of reckoning. However, this does not dispose the issue of limitation raised in this case, to which I shall soon return. On the decision of the Court of Appeal in Civil Appeal No. 105 of 2007, Mr. Kilindu correctly submitted that with that decision, Kisumu Resident Magistrate's Court in Employment Cause No. 24 of 1998 came to an end. The Court of Appeal did not think the matter could proceed under the Employment Act. That is why it mentioned the new labour law regime. It was thus a mistake on the part of the Labour Officer to proceed along the lines of the repealed law by filing the matter in the District Court, instead of following the new legal regime. This was not a continuation of the case earlier filed. It instituted a completely new case, which could not have been instituted under the repealed law. Indeed, under item 3, all pending matters as at 20th December 2010 would automatically fall within the jurisdiction of the Commission for Mediation and Arbitration! Hence, even if this matter was pending in a Court of law, jurisdiction would automatically have shifted to the Commission on 21st December 2010. The other matter raised was that the dispute was already time-barred. Mr. Kilinidu pointed out that the cause of action arose in December 1997. Since the action is based on breach of contract, the six-year period of limitation expired in December 2003. While I agree that this argument carries a lot of weight, I am inclined to think that the matter falls within the exception contained in section 21 of the Law of Limitation Act, Cap 89 (R.E. 2002). It excludes the time when a party is genuinely pursuing another civil proceeding arising out of

the same subject matter in a Court which, from defect of jurisdiction or such other cause, is unable to entertain it. For that reason, I would dismiss the ground of limitation and hold that the period spent by the Respondents in the RM's Court, the High Court and the Court of Appeal pursuing Employment Cause No. 24 of 1998 is excluded. ' ' On the basis of the foregoing, I would uphold the first ground raised in · thi~ revision, but reject the second. I hold that the Temeke District Court did not have jurisdiction to entertain this matter. However, the Respondents were not time-barred when they filed their case at the Temeke District Court. Consequently, I quash and set aside all proceedings in the District Court, ' Temeke, in Employment Cause No. 2 of 2010. \ Since this is a labour matter, I shall make no order as to costs. ' ' . DATED\nd DELIVERED . at Dar es Salaam this lih day of October 2012. F. Twaib Judge Page 5 of 5 II " ,. ., f 1:- - .... r ) (' l I ) ' 0, \ / . ' - ; \ , , , ~ . . i J " ::t ' i ; ; \ " ! · 1 ( , ~ , , , \_ ~ \ : , \_ , \_ \_ r .... , , ,

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