

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 38/2000

GODFREY SELENDO1ST APPLICANT
E. KIMAMBO2ND APPLICANT
A. MAEMBE3RD APPLICANT

V E R S U S

THE CHAIRMAN INDUSTRIAL COURT OF
TANZANIA1ST RESPONDENT
THE ATTORNEY GENERAL.2ND RESPONDENT

RULING

THEMA, J.

The applicants Godfrey Selendo, E. Kimambo and A. Maembe are ex employees of Tanzania Breweries Ltd and had their employment terminated on 30th day of April 1999 according to their respective affidavits filed in support of the application for extension of time for leave for orders of Certiorari and Mandamus. The application of the applicants has been filed pursuant to section 14 of the Law of Limitation Act 1971 and Section 95 of the Civil Procedure Code. In paragraphs seven of their affidavits the applicants depone that the Voluntary Agreement the basis upon which their employment was terminated was filed in court after their termination and the award came to their knowledge sometime in February 2000 in Civil Case No. 406/99. It is on record that the Voluntary Agreement became an award on 1/5/99 upon its registration on 14/5/99. The applicants are aggrieved that the said Voluntary Agreement was filed in court after the termination of their services and the same was given retrospective effect. Furthermore the Voluntary Agreement in view of the applicants is illegal for, among other reasons, one of the members of the panel did not sign the Agreement. In terms of paragraphs 11 of both affidavits the applicants depone that they failed to know about the existence of the Voluntary Agreement because the same came into existence after they were terminated from employment hence the application before the court.

The respondents or their part have raised a preliminary objection to the effect that the application is incompetent to the extent that it does not move the court properly for having been filed under section 95 of the Civil Procedure Code among others. It is further argued by the respondents that the jurisdiction of the High Court to grant relief by the way of prerogative orders derives from section 2(2) of the Judicature and Application of Laws, Cap 453 and Sections 17(2) and 17 A of the Law Reform (Fatal Accident and Miscellaneous Provision) Ordinance as amended by Act No. 55 of 1968 and Act No. 27 of 1991. In addition the application would be incompetent before the court because it does not have an accompanying statement and does not disclose any of the conditions precedent for the issue of prerogative orders.

In reply to the contention of the respondents, the applicants submit that the application at hand is for extension of time to file an application for leave out of time and as such section 14 of the Law of Limitation Act 1971 is grounded on the format provided for under Order XLII(2) of the Civil Procedure Code 1966.

It is quite evident from the record that indeed the application before the court is for extension of time to file an application for leave for orders of certiorari and mandamus filed under Section 14(1) of the Law of Limitation Act and 95 of the Civil Procedure Code 1966. However under the provisions of Section 13(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act No. 55 of 1968 " the Chief Justice has been empowered to make rules of court prescribing the procedure and the fees payable on documents to be filed or issued in cases where an order of mandamus, prohibition or certiorari is sought". To date no such rules have been made by the Chief Justice as such resort is to be made to the practice in England. Such practice would require the filing of a chamber summons, accompanied by an affidavit and a statement. The application before the court lacks the statement an important ingredient to the application.

To this extent I accept the submission of the learned State Attorney Mr. Chidowu that the court is entitled to strike out the application for being incompetently before it. In the event I strike out the application without costs.

As the order of striking out the application has sufficiently disposed of the whole application I find no useful purpose to deal with other points raised despite their seemingly relevance and importance. I so order.

S. Ihema

S. IHEMA

JUDGE

25/9/2002

Court: Ruling delivered this 26/9/2002 before the applicants and in the absence of the respondents who is to be notified.

S. Ihema

S. IHEMA

JUDGE

26/9/2002

Applicants: My Lord we pray to be supplied with copy of the Ruling.

Court: Prayer granted.

S. Ihema

S. IHEMA

JUDGE

26/9/2002