

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 44 OF 2004

KIHANIRA KULUNGE KIBAYA.....APPLICANT
VERSUS
MINISTER FOR LABOUR AND YOUTH
DEVELOPMENT AND TWO OTHERS.....RESPONDENTS

RULING

SHANGWA, J:

This is a preliminary objection against the applicant's application for leave to file an application for orders of Certiorari and mandamus to quash the decision of the Minister for Labour and Youth Development made on 24.11.2003 in which he confirmed the decision of the Temeke Conciliation Board that the applicant's reference to it was time barred.

The ground for objecting to the applicant's application that has been raised by learned State Attorney for the respondents

is that it is unmaintainable in law for having been filed out of time. It was submitted on behalf of the respondents that applications of this kind have to be filed within a period of six months from the date of the Minister's decision.

The Learned State Attorney said that whereas the Minister's decision was given on 17.5.1988, the applicant's application was filed on 20.5.2004. He contended that had the applicant filed his application within time, the same should have been filed within six months counting from 17.5.1988. That is by 16.2.1999. He referred the Court to S.18 (3) of the Law Reform (Fatal Accident Misc. Provisions) Act, No.55 of 1968 which prescribes for a period of six months within which such applications have to be filed.

Furthermore, it was submitted on behalf of the respondents that the applicant's application is res-judicata in the sense that the matters which are involved are similar to

those which were raised and determined in High Court Civil Appeal case No.11 of 1990 K.K. Kibaya vs UAC of (T) Ltd. which was between the same parties.

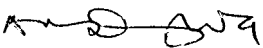
It was submitted by the applicant that his application for leave to apply for orders of Certiorari and mandamus is within time. He said he filed it within the Statutory period of six months from the date of the Minister's decision. He said, the Ministers' decision was made on 24.11.2003 and his application was filed on 20.5.2004.

Furthermore, he said that his application is not re-judicata. He said, he is aware of Civil case No. 11 of 1990 mentioned above but that when that case was over, he was reinstated by the 3rd respondent who terminated his services once again.

On perusing the record, I have found that the Minister's decision confirming the decision of the Conciliation Board was

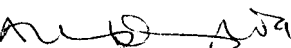
made on 24.11.2003. The Minister's decision is annexed to the applicant's affidavit in support of his application and it is marked as 'D'. I have also found that the applicant presented his application for filing on 20.5.2004. Counting from 24.11.2003 when the Minister made his decision to 20.5.2004 when the applicant filed his application is a period of six months. This means that his application was filed in accordance with the mandatory provisions of S.18 (3) of the Law Reform (Fatal Accident Misc. Provisions) Act 1968 referred to by the learned State Attorney for the respondents. Therefore, it is not correct as submitted on behalf of the respondents that his application is time barred. As the application which is before me concerns a request for leave to make an application for orders of certiorari and mandamus, the question as to whether or not the applicant's application for the said orders is res-judicata appears to me to be premature. It has to be raised at the time of hearing the application itself.

Therefore, I dismiss this Preliminary objection and grant the applicant leave to apply for orders of certiorari and mandamus but I order that each party should bear its own Costs.


A. Shangwa
JUDGE
25.2.2005

Delivered in open Court at Dar es Salaam this 25th day of February, 2005.




A. Shangwa
JUDGE
25.2.2005