

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(LABOUR DIVISION)  
SUMBAWANGA DISTRICT REGISTRY  
AT SUMBAWANGA**

**MISC. LABOUR APPLICATION NO.05 OF 2020**

*(Originating from Labour Dispute No. CMA/RK/69/2016 before Hon. Oscar Ngaruka,  
in the Commission for Mediation and Arbitration at Mpanda)*

**JASTON WILSON KAYAGAMBE ..... 1<sup>ST</sup> APPLICANT**

**SOSPETER LADISLAUS RUGAMILA ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE TRUSTEE OF THE TANZANIA  
NATIONAL PARKS..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

*Date of Last of Order: 17/05/2022*

*Date of Ruling: 31/01/2023*

**RULING**

**NDUNGURU, J.**

This ruling is in respect of the preliminary objection raised by the respondent against the filing of this application for extension of time for filing an application for revision out of time. At the outset I find it important to state that composing this ruling has taken very long waiting for original record from CMA. As it can be noted that it is brought un typed after

several reminder. The gist behind this application is that, the applicants herein unsuccessfully sued the respondents herein at the Commission for Mediation and Arbitration for Rukwa and Katavi (CMA) as they were employed by the 1<sup>st</sup> respondent as Park Rangers and they were terminated from work for disciplinary issues. As they were aggrieved by the decision of the CMA, they filed an application to this court only for it to be struck out for being incompetent for being supported by an affidavit of one applicant only instead of both them.

As this application was scheduled for hearing, the respondents through their legal representatives raised preliminary objection that the application is incompetent and incurably defective for failure to observe the mandatory procedures laid down by the Government Proceedings Act, Cap 5 as amended from time to time, and that this court lacks jurisdiction on this matter. In that, the respondents pray for the dismissal of this Application with costs.

At the hearing of this preliminary objection, the respondents were represented by Mr. Kamugisha the learned State Attorney while the applicants were enjoying the service of Mr. Nzowa learned Advocate.

Submitting for the preliminary objections as raised, Mr. Kamugisha stated that they have raised objection against this application and filed it in this court on the 25/09/2020. He added that their objection had two limbs,

but he opted to drop/abandon the 2<sup>nd</sup> point of objection and remain with only one objection.

The learned State Attorney submitted that, Application No. 5 of 2020 arose from the labour dispute at the CMA where the 2<sup>nd</sup> respondent was not a party to it, whereas the Applicants delayed to file the Application for Revision and therefore this application for extension of time.

Mr. Kamugisha proceeded that, in this application the Applicants have joined the A.G. According to Article 59 (3) (4) of the Constitution of United Republic of Tanzania which provides that A.G is a chief legal adviser of the government and a representative of the Government before the Court of law. In addition to that, the learned State Attorney added that according to Section 6(2) of the Government Proceedings Act Cap 5 (RE 2019), the A.G must be issued with a Notice of 90 days before is brought to the court.

Mr. Kamugisha referred this court to the Blacks' Law Dictionary, Bryan A. Ghana, 8<sup>th</sup> Edition at page 4499 which defined the term suit as follows:

*"Any proceedings by a part or parties against another in a court of law"*

Wherefore, he added that as a suit is any proceedings before the court of law, which meant even this current application against the 2<sup>nd</sup> Respondent/Government is a suit, and to that fact the A.G was required to

be given statutory notice of 90 days, and unfortunately in the applicants' affidavit nowhere is stated that the 2<sup>nd</sup> respondent was given a 90 days' notice, and consequently this application becomes incompetent thus it be struck out.

In reply, Mr. Nzowa for the applicants submitted that this objection by the respondents has no legal legs to stand on. That the application before this court is for extension of time to file revision against the award of CMA in the complaint No. CMA/RK/69/2016 and that they filed this application after the Application for Revision No. 1 of 2020 was struck out, which involved the applicants and the 1<sup>st</sup> Respondent.

The learned advocate proceeded that the 2<sup>nd</sup> respondent was joined following the amendment of the law in The Written Laws (Misc. Amendments) Act No. 1 of 2020, he insisted that the 2<sup>nd</sup> respondent was not a party before which meant they mis joined him in this application. And therefore, they pray for this court Under Rule 55 (i) of the Labour Court Rules GN No. 106 of 2007 read together with Order 1 Rule 10 (1) of the Civil Procedure Code that the 2<sup>nd</sup> respondent be removed because he was improperly joined.

Submitting further, Mr. Nzowa added that this application for extension of time is not a suit, because, this application does not determine the rights of the parties. He added, Order IV Rule 1 of the Civil Procedure

Code though it has not defined a suit, but it provides how a suit is filed, it is by presenting a plaint. Mr. Nzowa insisted that according to the Labour Court Rules, suits are the ones presented before the CMA under Section 86 (1) of EFRA by form CMA 1. Whereas, in court, Labour Suit is presented under Rule 6 (1) of the Labour Court Rules of 2007. Mr. Nzowa stressed that, in fact the suit is the one which finally determines the rights of the parties. He concluded that the application before this court is for extension of time and that it does not finally determine the right of the parties, and thus they pray for the objection to be overruled.

In rejoinder, Mr. Kamugisha submitted that in essence the advocate for the applicants has conceded that this application is incompetent and prayed it be ruled out Under Rule 55 of LC Rules and Order 1 Rule 10(1) of Civil Procedure Code. The learned State Attorney added that, it is the position of law that the amendment cannot be done after Preliminary Objection has been raised. He referred this court to the case of **Method Kinonogolo V. TANAPA Civil Application No. of 2005** (Unreported) and that the rectification which the counsel for the applicants prays is to pre-empt the Preliminary Objection raised.

Mr. Kamugisha concluded that, on whether this application is a suit or not, Ordered IV referred by the counsel for the applicants has not defined what a suit is. He then reiterated the definition of the Black's Law Dictionary and concluded that if the counsel has not disputed what is

stated in the Black's law Dictionary, it means he has admitted what has been stated in the Black's Law Dictionary, and therefore insist what has been submitted in their submission in chief that this Application is a suit, and that this application determines the rights of the parties and that the learned Counsel has misconceived it, therefore Mr. Kamugisha insists that this application is incompetent and deserves to be struck out.

After both sides had finished submitting for and against the raised preliminary objection, the only determinant issue in resolving this battle is ***whether the raised preliminary objection is meritorious.*** As this court goes forthwith in resolving this objection, it is outright prudent to understand the term 'suit' as the law recognises it, for the learned State Attorney has his objection pinned on it, that the applicants were to issue a Notice of 90 days to the A.G before bringing this application (suit) to this court.

The term 'suit' has been well defined by the Law of Limitation Act Cap, 89 [R. E. 2019] under Section 2 which concerns interpretations of various terms used as per the law, the exact interpretation of the term 'suit' is;

*" 'suit' means any proceeding of a civil nature instituted in any court but does not include **an appeal or application;**"*

After going through the submissions from both sides and the law that well defines the term 'suit', I have found as rightly pointed out by the counsel for the applicants, that, this matter being an application of extension of time, if granted, it would in no circumstance prejudice the rights of the respondents all together, and indeed the 2<sup>nd</sup> respondent was mis-joined in this application since he was not a party in a suit filed in the CMA. In line with what was submitted by the counsel for the applicants, this court Under Rule 55 (i) of the Labour Court Rules GN No. 106 of 2007 read together with Order 1 Rule 10 (1) of the Civil Procedure Code, hereby removes the 2<sup>nd</sup> respondent from this application, for indeed he was wrongly included, meaning the prayer made by the counsel for the applicant has been granted.

On the face of it, I join hands with the learned advocate for the applicants that this matter is an application and not a suit as discussed above, and therefore the preliminary objection raised by the learned State Attorney representing the respondents is without any merits and it is hereby dismissed.

It is so ordered.



  
**D.B. NDUNGURU**

**JUDGE**

**30/01/2023**