

**IN THE HIGH COURT OF TANZANIA  
(MAIN REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 28 OF 2020**

**HENRY MWISONGO.....APPLICANT**

**VERSUS**

**CHIEF DEFENCE FORCE.....1<sup>st</sup> RESPONDENT**

**THE PERMANENT SECRETARY  
MINISTRY OF DEFENCE.....2<sup>nd</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>rd</sup> RESPONDENT**

**RULING**

*30/09/2020 & 23/10/2020*

**Masoud, J.**

With chamber summons supported by his affidavit, the applicant was, under section 14(1) of the Law of Limitation Act, cap. 89 R.E 2019, seeking for extension of time to “*to lodge application for extension of time to file leave for judicial review to challenge the order of the respondents.*” Although the relief sought is, seemingly, confusing since it was not challenged in any way, I will not treat it as an issue and would read it as a prayer for extension of time within which to apply for leave to lodge an application for judicial review against the alleged order of the respondents.

The respondents opposed the application. They filed a counter affidavit deposed by one Kause Izina, learned State Attorney working with the Office of the Solicitor General. They also raised two preliminary points of objection. They were to the effect that the court does not have jurisdiction to entertain the matter as the applicant did not exhaust local remedies under the National Defence Act [cap. 192 R.E 2002] and its regulations; and that the decision challenged by the applicant is non-existent as the second respondent never made any decision in terminating the applicant.

The preliminary objections were disposed of by filing of written submissions. The parties were also directed to file written submission in respect of the merit of the application which were to be considered if the preliminary objections would not dispose of the matter. The applicant was unrepresented, but seemed to enjoy the assistance of the so called Juristic and Social Development in Tanzania, which assisted him in preparing his written submissions. A legal aid certificate in this respect is on the record.

All written submissions were duly filed. Considerations were first made by this court on the submissions on the preliminary objections.

Depending on the outcome of my deliberations on the submissions, the court would determine whether it has to proceed with consideration of the application on its merit.

From the submissions on the objections, it was not in dispute that there is a special mechanism under the National Defence Act and the Defence Forces Regulations and Orders for Defence Forces in which the applicant was supposed to challenge the decision which ended his service. Reference was in this respect made to regulation 12.26(5)&(8) of the Regulations which require any person who is aggrieved by any decision to submit his complaint in writing to the Minister and the Minister shall thereafter cause inquiry on the complaint to be conducted.

The argument of the respondents was that the applicant did not follow the above procedure which is mandatory. Since the procedure is provided by a specific law and was not complied with this court does not have jurisdiction to entertain the matter in its present form.

Conversely, the applicant's argument was that he did complain to the proper authority in vain. He relied on the 90-day notice of intention to

sue issued to the Permanent Secretary of the Ministry of Defence as the complaint he lodged to the Minister as per the requirement of the law.

In support of the respondents' submissions on the first point of objection several decisions were cited. They are, **Tanzania Revenue Authority vs Tango Transport Company Ltd** Civil Appeal No. 84 of 2009 (Arusha); **Medical Stores Department vs Amin Mapunda**, Revision No. 183 of 2013 (Labour Division); and **PC Sunday Simon Mwaikwila vs Inspector General of Police and Another**, Civil Case No. 29 of 2017 which had to do with the principle requiring first resort to specific forums for adjudication of a matter before recourse to a civil court if warranted.

The extension sought as shown above is with a view to enabling the applicant to file an application for judicial review against the decision that led to termination of his service. Much as the applicant was moving the court for the extension to file leave application to enable him file the intended application for judicial review, the supporting affidavit did not show that there were indeed alternative remedies available for him, why he did not access them as is required by the law and whether or not the same was inappropriate in the circumstances.

The argument that there was a 90-day notice of brought the applicant's complaint to the Minister is misconceived in the following respects. The notice was clearly made under the Government Proceedings with the intention of filing a suit in a civil court against the respondents. As such, it was not a complaint under the regulations requiring the Minister for Defence to initiate an inquiry on the complaint. The relevant paragraph of the applicant's affidavit in which the said 90-day notice was annexed speaks loud and clear in support of the above stance as thus:

*10. That following the facts stated paragraph 7 above the applicant did consult the Legal and Human Right Centre for legal assistance in which after served a statutory notice where was assisted to prepare the legal document which filed the Civil Case No. 46 of 2017 before this Honourable Court claimed for Tshs. 450,000,000/- for unpaid salaries for unlawful termination from employment. Upon appearing for hearing the Respondent raised preliminary objection of time bad as a result the case was dismissed on 21<sup>st</sup> day of July, 2017(sic).*

The record availed to this court shows that the applicant did indeed file a civil case (i.e Civil Case No.46 of 2017) against the second and third respondent herein for specific and general damages for the alleged illegal and unfair termination of his employment with the second respondent. The suit was dismissed for being brought in violation of

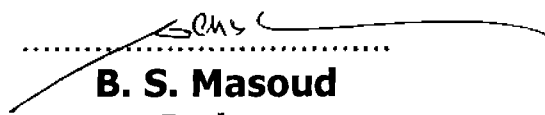
section 63 of the National Defence Act which requires a suit or any other civil proceedings against the said respondent or any other person to be commenced within six months of the complained act, neglect, or default complained.

The attempt to appeal against the decision was not successful, hence the present attempt for extension of time with a view to challenging the termination by judicial review. Ironically, the applicant is seemingly seeking to achieve what he failed to achieve when he opted to file a civil suit as opposed to resorting to the mechanism within the National Defence Act.

As a result of the foregoing, therefore, there were no materials for the court to determine whether this was a fit case for the applicant to be granted extension so that he can resort to judicial review as opposed to the specific remedies available under the specific law. Nonetheless, with the existence of the decision of this court in Civil Case No. 46 of 2017 which concerned the same termination sought to be challenged by way of judicial review if extension of time is granted, I do not think that this court has in the circumstances jurisdiction to deal with the same decision by way of judicial review.

In the upshot, the application is incompetent for reasons stated. Both points of objection are accordingly sustained. The application is struck out forthwith. Since the applicant had a legal aid certificate, I will not make any order as to costs. Ordered accordingly.

DATED and DELIVERED at Dar es salaam this 23<sup>rd</sup> day of October 2020.

  
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**B. S. Masoud**  
**Judge**