

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM**

MISCELLANEOUS CIVIL APPLICATION NO.19 OF 2023

**IN THE MATTER FOR APPLICATION FOR EXTENSION OF TIME
TO APPLY FOR PREROGATIVE ORDERS OF MANDAMUS AND
CERTIORARI**

BETWEEN

SAMWEL YOHANA YORAM..... APPLICANT

VERSUS

THE DISTRICT EXECUTIVE DIRECTOR

BAGAMOYO DISTRICT COUNCIL1ST RESPONDENT

TEACHERS SERVICE COMMISSION

BAGAMOYO DISTRICT COMMISSION2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

15th & 22nd August, 2023.

DYANSOBERA, J.

The applicant herein has filed an application for extension of time in which he can apply for prerogative orders of *certiorari* and *mandamus*. The application has been made under section 14 (1) of The Law of Limitation Act [Cap.89 R.E 2019] and is supported by the affidavit of **SAMWELI YOHANA YORAM**, the applicant. The respondents have opposed the application through a joint counter affidavit deposed to by **JACKLINE BENEDICT KAVISHE**, the learned State Attorney.

The application was disposed of orally whereby the applicant appeared in person and fended for himself. For the 1st and 2nd respondents stood Ms Magdalena Mwakabungu, learned State Attorney.

During hearing of this application, the applicant adopted his affidavit and explaining away his delay, he submitted that since 27.2.2023 when he filed this application, he has been in court pursuing his rights. He went further and stated that on 2.6.2023 his application was struck out on technicalities and was, therefore, not heard on merit and on 12.6.2023 he filed this application for extension of time.

The applicant then embarked on replying the respondents' joint counter affidavit. With respect to paragraph 6(a) of the said joint counter affidavit, the applicant contended that he filed this application on 12.6.2023 at 1300 hrs as per the ERV and the record and not on 13.6.2023 as averred in the respondents' joint counter affidavit. Narrating the sequence of events, the applicant told this court that his main application was struck out on 2.6.2023 which was Friday. He argued that the subsequent two days that is the 3rd (Saturday) and the 4th (Sunday) of June, 2023 were week-ends which means that he could not have filed his application. On 5th June, the applicant was required to come to court and collect a copy of the ruling/order. On 6.6.2023 he prepared the document

and on the following day, that is 7.6.2023 he made an on-line filing. On 8.6.2023 upon a follow up, the applicant discovered that the document was not yet admitted and on the following day, the network was unreliable as such he failed to know if the document was admitted. On 10th and 11th were week-ends. On Monday 12th June, 2023 the applicant came to court and paid for the documents and the documents were, accordingly, filed. The applicant argued that his failure to file this application in time was beyond his control.

With respect to paragraph 6 (b) of the respondents' counter affidavit, the applicant argues that the letter mentioned is a proof that his salaries were illegally retained that is why, to date, he is still claiming them as, according to him, the salaries are his right and the letter signifies that he was unfairly terminated.

On paragraph 16 (c) of the respondents' joint counter affidavit, the applicant informed the court that the letter dated 10.2.2021 was a document relating to the investigation committee held at Kerege Secondary School and not of a disciplinary committee which sat on 2nd March, 2021. He complained that he was denied of his right to be heard by the disciplinary authority, the right guaranteed by Article 6 of the

Constitution of the United Republic of Tanzania, 1977 as amended from time to time.

On her part, Ms Magdalena, adopting the joint affidavit of the respondents, contended that the applicant has not demonstrated sufficient reasons to warrant this court extend the time to file the application for judicial review out of time. It was her further contention that the applicant has not met conditions for extension of time as set out in the case of **Lyamuya Construction Co. Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha at pages 6 and 7.

Citing the case of **Elias Kahimba Tibenderana v IGP and AG**, Civil Application No.388 of 2020, CAT at Dar es Salaam, at page 6 and 7, the learned State Attorney argued that the applicant has not accounted for each day of delay by showing what he was doing on those days in between.

With regard to illegality, learned State Attorney contended that, the applicant has not indicated the illegality to be found on the impugned decision. According to her, the allegation of being denied the right to be heard and unprocedural impropriety does not depend on the assertion of illegality. She cited the case of **Omary Ally Nyamalege**

(Administrator of the estate of the late Seleman Ally Nyamalege)

& Others vs Mwanza Engineering Works, Civil Application No.94/08

of 2017 at page 12 and on the 2nd paragraph suggesting that what the applicant has raised as illegality requires evidence which will attract a long drawn process. There were no questions like that of jurisdiction, Ms Magdalena Mwakabungu asserted and prayed the application to be dismissed with costs.

Rejoining, the applicant maintained that he had sufficiently demonstrated the reasons for extension of time. Making reference to Annexure C to his affidavit which is the decision of the Hon. Mzuna, J. made on 2.6.2023, the applicant insisted that that day was Friday and the dispatch which he signed when taking the copies of the judgment indicates that the same copies were supplied to him on 5th June, 2023.

He urged this court to allow this application and extend for him time to file his application for prerogative orders of *certiorari* and *mandamus*.

Having heard the rival submissions from both parties, the main issue before this court for determination is whether the reasons adduced by the applicant are reasonable and sufficient to warrant this court extend the time.

It is a trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the ***delays was with the sufficient/good cause as*** per section 14(1) of the law of limitation Act CAP [89 R.E 2019]. See also the case of **Tanzania Breweries Ltd vs Leo Kobelo** (Civil Application 64 of 2020) [2021] TZCA 71 (12 March 2021) reported in www.tanzlii.org.tz

In the matter at hand, although it is not certain how long the applicant delayed, it is my view that the delayed days must exclude the those days which the applicant was in this court pursuing his Miscellaneous Civil Application No. 07 of 2023 (annexture C to the applicant's affidavit) which was struck out for non-joinder of a necessary party. This was, to the say the least, was not in the armpit of the applicant rather, it was a technical delay and acceptable in law. I am fortified in this by the provisions of section 21 (2)(3) (c) of the Law of Limitation Act [CAP 89 R.E 2019] and the case of **Erica Herman & Another vs Magdalena Herman Muna Gidadi (Civil Application 130 of 2019)** [2022] TZCA 768 (6 December 2022) at page 4, the 2nd paragraph. Reported in www.Tanzlii.go.tz .

Respecting the applicant accounting for delayed days from the date when Miscellaneous Civil Application No. 07 of 2023 was struck out to the time he filed this application, I find that the applicant has sufficiently explained away the delay. It is worthy noting that the copies of the ruling of the struck-out decision were not made available on the delivery date. Further it is undisputed that 2nd day of June, 2023 was Friday, and 3rd and 4th day of June, 2023 fell, respectively on Saturday and Sunday, which were not working days. As per the submission of the applicant (which was not disputed by the respondents) the copies of the struck-out ruling were delivered to the applicant on 5th June 2023. On 6th June, 2023, was used for preparing the documents for this application which was filed online on 7th June, 2023 and till 8th June, 2023 the application was not admitted, though the same was not backed up with evidence but I believe to be true as the respondents have not countered that assertion. The 10TH and 11th of June 2023 was weekends, therefore no court services were available. On 12th, June, 2023 the filing fees were assessed and paid by the applicant and the application was thereby filed and registered. I am aware that all what has been explained by the applicant on the chronology of event from 2nd June, 2023 to 12th June, 2023 has not been featured in his affidavit and therefore a submission from the bar, but the applicant being a lay person, and for the interest of justice I find that this non-

inclusion in the affidavit has not prejudiced the respondents. Further, the applicant has accounted for the delayed days, demonstrated diligence not sloppiness and the delay is not inordinate. I am satisfied that the applicant complied with the criteria set out in the case of **Lyamuya Construction Co. Ltd V Borad of Registered Trustees of Young Women Christian Association of Tanzania**, (supra) which in page 6 stated among others that ; I quote,

a)The applicant must account for all the period of delay

b)The delay should not be inordinate

c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take...

With regard to illegality, I agree with the submission of Ms, Magdalena, the learned State Attorney, that for the same to be considered as a ground for extension of time, it must be apparent on the face of the record. This principle has been enumerated in a litany of cases by the Court of Appeal one of them being **Lyamuya Construction Company Limited (supra)**, in which the Court insisted that such point of law must be that of sufficient importance. The Court said:

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, **it cannot in my view, be said that in Valambhia's case the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one.** The Court there emphasized that such point of law **must** be that of sufficient importance and, **I would add that it must also be apparent on the face of the record, such as the question of jurisdiction, (but) not one that would be discovered by a long-drawn argument or process.**"(emphasis added)*

The Court emphasized on the above principles in other cases like **Mekefason Mandal & Others vs Registered Trustees of The Archdiocese of Dar es Salaam (Civil Application 397 of 2019) [2019] TZCA 450 (30 October 2019)** reported in www.tanzlii.go.tz which at page 13, subscribed the case of **Lyamuya Construction (supra), Principal Secretary, Ministry of Defence and National Service v. D.P. Valambhia [1992] TLR 187, Fatma Hussein Shariff vs Alikhan Abdallah & Others (Civil Appeal 536 of 2017) [2021]**

TZCA 47 (24 February 2021) reported in www.tanzlii.go.tz , **Mathew T. Kitambala vs Rabson Grayson & Another** (Criminal Appeal 330 of 2018) [2022] TZCA 572 (23 September 2022) at page 12.

As correctly pointed out by the learned State Attorney, the issue of procedural irregularity and denial of right to be heard raised by the applicant herein as in his submission, requires a more evidence and process to be proved as is a centre of dispute in the main application which is not the function of the present exercise.

For the reasons stated, I find this application meritorious. The same is granted and time for the applicant to file his application for prerogative orders of *certiorari* and *mandamus* is extended. He should file the application within fifteen (15) days from the date of this ruling.

Costs shall be in the main cause.

It is so ordered.




W. P. Dyansobera
JUDGE
22.8.2023

DATED and DELIVERED at Dar es Salaam this 22nd day of August, 2023 in the presence of the applicant in person and Ms Magdalena Mwakabungu, learned State Attorney for the respondents.




W. P. Dyansobera
JUDGE