

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA SUB-REGISTRY**

**AT ARUSHA**

**MISCELLANEOUS CIVIL APPLICATION NO. 14 OF 2023**

*(Arising from the decision of the President delivered on 17<sup>th</sup> day of September 2019  
confirming the decision of the Public Service Commission delivered on the 13<sup>th</sup> day of March  
2019)*

**CUTHBERT ROBERT KAJUNA \_\_\_\_\_ APPLICANT**

***VERSUS***

**TANZANIA FOREST SERVICE AGENCY \_\_\_\_\_ 1<sup>ST</sup> RESPONDENT**

**PERMANENT SECRETARY, MINISTRY**

**OF NATURAL RESOURCES & TOURISM \_\_\_\_\_ 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL \_\_\_\_\_ 3<sup>RD</sup> RESPONDENT**

**RULING**

19/09/2023 & 24/11/2023

**BADE, J.**

This is an application for the grant of an order for an extension of time within which the Applicant can file an Application for Leave to apply for mandamus orders against the order of the President delivered on the 17<sup>th</sup> day of September 2019, confirming the decision of the Public Service Commission of dismissing the Applicant from his employment.

The Application is made under the provision of Section 14 (1) of the Law

of Limitation Act, [CAP 89 R.E 2019] through Chamber Summons supported by the applicant's affidavit.

This application was argued orally, The Applicant was represented by Ms. Fatma Amir, learned counsel while the respondents were represented by Mr. Mukama Musalama and Lydia Patrick Akitende learned counsel.


The Applicant's affidavit has canvassed various facts in support of the Application explaining the reasons for seeking an extension of time.

To give context to the application, I revisited the facts of the case albeit briefly, and found out the present has a checkered history. The Applicant was employed as an accountant before his employment was officially terminated on 15/02/2018, by a disciplinary authority on the charge that he caused a loss to the Government revenues. He was aggrieved by the decision to terminate his employment, hence he appealed to the Public Service Commission on 13/03/2019 but the Public Service Commission upheld the decision of the disciplinary authority. Again, he was not satisfied with the said decision, so he appealed to the President of the United Republic of Tanzania, on 17/09/2019, the President confirmed and upheld the decision of the Public Service Commission.

He was not amused by that decision as well, but found that he was out of time so he filed an Application for condonation before the CMA. After the Application for condonation was allowed, he filed an Application for Review before CMA which was ruled in his favor on 08/10/2021. The respondents in turn filed an Application for Revision in this Court and on 14/09/2022 it was ruled out that the CMA lacked jurisdiction and quashed the Award of CMA.

On 15/11/2022 he filed an Application for an extension of time to file Judicial Review in this Court, Labour Division, but he withdrew the same on 09/02/2023 after the Court raised the issue of jurisdiction, hence the instant Application.

In submitting for the support of the Application, the Applicant's Counsel submitted that in any application for an extension of time, the applicant is supposed to show good or sufficient reason and the same has been expounded in different authorities that one has to account for each day of delay, and the delay should not be inordinate, and show diligence, not sloppiness or negligence. Also when there is a reason such as illegality or any point of law, the court could grant an extension on those bases.



Ms. Fatma Amir further submitted that from paragraph 4 to paragraph 17 of the affidavit, the applicant has accounted for the cause of his delay, with the last day accounted for being 24/02/2023 when he filed this Application through JSDS. He contended that under Rule 21 (1) of Electronic Filing Rules of 2018, 24/02/2023 it is the date when the Application was filed. There was no specific time assigned by the court for which the application has to be filed, so she prayed that 24/02/2023 be deemed as the date over which this Application has been filed in court. The delay was based on a technical error.

Moreover, she contended that paragraphs 12 to 16 of the affidavit show that after the President's decision the Applicant prayed for condonation at the CMA and the matter was heard, but the respondents had revised the CMA award through Revision no. 111 of 2023, where the CMA was found to lack jurisdiction and quashed the CMA award, after which the applicant filed an application with Labour Division of the High Court and through annexure V7, the Labour Division dismissed the Application for leave to file a Judicial Review, and for the said Application to be filed under the High Court Registry.

It is Ms. Amir's contention that all this time the Applicant was pursuing his right except he was doing it in the wrong forum, so the time he was

using is excusable under section 21 (2) of the Law of Limitation Act (allowing for automatic exclusion of time spent by the applicant prosecuting other proceedings against the same party for the same reliefs). To support her position, she cited the case of **William Fortunatus Masha vs William Shija**, (uncited) which she argues, provided an excuse for technical errors.

Moreover, Ms Amir submitted that another ground suffice to grant the applicant an extension of time is illegality apparent on the face of the record, and maintains that according to annexure V1 and V8, the applicant was not given time to bring his witness, neither was he represented or had his exhibits and he was forced to proceed with the hearing of the interrogation. He was not availed of the gist of the matters charged against him as he did not have the documents that he was supposed to have. The President affirmed the decision of the Public Service Commission despite it having illegalities.

It is Ms Amir's assertion that another ground is the illness of the applicant who was suffering from different ailments such as degenerative disease of the spine joints and hypertension and he was still on medication, referring this Court at Annexure V4. To support her assertion that sickness is one of the grounds for extension of time she

cited the case of **Murtaza Raza Viran and Another vs Mehboob Hassanali Varsi**, Civil Application No. 448/01 of 2020, contending that sickness is not a shared experience as it is only a sick person who can share their condition. It is the Applicant who said he was sick and produced medical chits, and despite the Applicant attending court, he was unwell and there was no proof from the respondent refuting that the Applicant has not suffered.

She further urges that the grant of this Application will not affect the respondent, neither have they contested that they will be affected. She insisted that the Applicant was pursuing his rights in good faith, he was diligent.

In opposing the Application, the counsel for the respondents adopted the contents of their counter affidavit to form part of his submission. He maintains that what shows the sufficiency of the cause depends on the particular case. He argues that the Applicant was supposed to show the said good cause for the court to exercise its discretion pointing to the case of **Regional Manager Tanroads Kagera vs Ruaha Concrete Co Ltd**, Civil Application No. 96 of 2007, where the Court of Appeal of Tanzania stated that what constitutes sufficient reason cannot be laid down by hard and fast rule. The Court will have to be moved by the

Applicant through placing materials before it to show sufficient reason. It is Mr. Musalama's contention that from April 2020 to the date when the Application was withdrawn on 09/02/2023 the Applicant was quite well as he was appearing unrepresented in all the matters in the High Court and the subordinate tribunals, so the allegation that he was unwell is untenable. That the report, V4 was issued in 2015 in which he was assigned 3 days off duty. He added that the attachments of 24/03/2020 were both given before the applicant was attending the matter in court, contending that none of the reports stipulates that the Applicant was unwell and should not attend any duties.

It is the counsel's strong assertion that for the allegation of sickness to be a reason for an extension of time the applicant is supposed to explain in which way the sickness prohibited the applicant from taking action to pursue his rights before the court, and that failure to explain such reason on the affidavit makes the said reason untenable. To support his position, he cited the case of **Shembilu Shefaya vs Omary Ally**, (1992) TLR 245; chiming in that the affidavit of the applicant does not state in any way how the sickness has prevented him from taking the action, except in paragraph 13 in which he points out that he relies on sickness as a ground. He added that the applicant has to attach the

medical report that he was unwell and was supposed to be off duty or resting. To cement his position, he cited the case of **Grantech Co Ltd vs Diamond Trust Bank (T) Ltd and 4 Others**, Civil Application No. 447/16 of 2021.

It is the State Attorney's contention that there is no affidavit showing that since the order of the President was issued, the Applicant was unwell and unable to pursue his claim, but rather he attached a letter, which has no address, issued before he started pursuing his rights. He argues in the case of **Murtaza Mohamed (supra)** cited by the applicant's counsel despite explaining sickness as a reason for extending time, there was a medical report showing that they were unwell, with a sick sheet showing asthma and covid 19. In his view, this supports his contention that one has to substantiate the claim that he was unwell with a medical chit. Since this case was decided on 07/02/2023 while the Grantech case was decided on 01/08/2023, he argues, then the most current version of the Court of Appeal decision should prevail.

On the issue of illegality, he submitted that the same has to be on the face of the record. The applicant has to show on the affidavit this fact. The order of the President was delivered on 07/09/2019 but the actual decision that he wants to challenge is comprised of annexure V2,




praying for an extension of time to file leave for issuance of the order of mandamus. That the Applicant has not shown the illegality on the order of the President that the Applicant is seeking to challenge. The Court of Appeal has ruled out that for any illegality to pass as a ground, it should be on the face of the record and that it should be related to the procedural issues of the court itself.

He thus maintained that for illegality to be a ground for extension of time the following have to prevail; one, that the President had no jurisdiction to hear and determine the appeal, two, the appeal was time barred and three the appellant/applicant was denied the right to be heard before the President. That the applicant's counsel did not make any submission regarding the said issues as explained thus making illegality as a ground for an extension of time against the presidential order to be untenable. To support his position, he cited the case of **Richard Kombe vs Kinondoni Municipal Council**, Civil Reference No. 13 of 2019.

On accounting for the days of the delay, Mr. Musalama disputed the Applicant's accounting for the delays. He argues that the Presidential Order was issued in 2019 while this Application was brought in this Court on 01/03/2023. He added that per Judicial Review procedures, the

same should have been instituted within 6 months after the order or decision needed to be challenged happened. From the date of delivery of the presidential decision to when this application was filed 1241 days have roughly lapsed. He contended that authorities make it mandatory for the need to account for the time of delay concluding that from the very beginning, the respondent had put a preliminary objection that the CMA had no jurisdiction, so it was negligence.

The State Attorney further submitted that on 09/02/2023 is when the decision for revision was issued, while this application was filed in March 2023, after the lapse of 21 days but the applicant offered no explanation as to where he was during all this time. That he was not attached any letter that he requested for a copy of the order dated 09/02/2023 by Tiganga, J. which was attached as V7, which was signed by the judge on the same day it was delivered. Hence, no proof that he took the necessary steps to pursue the claim. He insisted that a delay of even a single day must be accounted for. Section 21 (2) of the Law of Limitation Act is clear that a party is pursuing their rights in good faith. He insisted that the applicant had no good faith as he was informed that the CMA had no jurisdiction in challenging the presidential order, but he chose to pursue the said right through CMA, he had no reason to keep



on doing what he did after he was informed, which means he was acting in bad faith against the office of the president. That the case of Jacob had neither been supplied in court nor its citation provided, and so it should be disregarded.

Rejoining, counsel for the applicant submitted that the allegation by counsel for the respondents that the applicant has bad faith was not reflected on the counter affidavit.

On the issue of preliminary objection, he argues that it was overruled by CMA. About 21 days left unaccounted for, she submitted that it is not actually 21 days but rather 15 days. Under paragraph 17 of the affidavit, the applicant has accounted for the days that he was making follow-ups. She further argues that there is no proof by the respondent of how the applicant would be able to obtain the annexure or if they obtained the annexure before the respondent.

Regarding the illegality, she submitted that it is on the face of the record as was evidenced by Annexure V2. That it was held that condemned unheard is ground for illegality. Ms. Amir contended that medical chit covering 2020 while the respondent insists that the matter against them was filed in 2019.

Having perused the filed affidavits and rival submissions by parties, the task before me is to determine whether the applicant has shown good cause for an extension of time to grant.

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 (unreported) there have been established guidelines to be followed before granting an extension of time, thus:

- (a) The applicant must account for all the periods of delay.
- (b) The delay should not be inordinate.
- (c) The application must show diligence, and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take.
- (d) If the Court feels that there are other sufficient important reasons such as the illegality of the decision sought to be challenged.

Similarly, in the case of **Laurent Simion Assenga vs Joseph Magoso & 2 Others**, Civil Application No. 50 of 2016 the Court of Appeal expounded further in answer to the question of a good cause

About the issue of technical delay, it was alleged by the counsel for the applicant that, the delay was contributed by the fact that the applicant was a layperson who did not know the procedure, which led him to file his claim on the wrong forum. Going through the record on the file it is true that after the decision of the President confirming the decision of the Public Service Commission that terminated the applicant's employment, he instituted the application for condonation before CMA, (annexure V3), then he instituted the Application for Revision, (annexure V5), then CMA's decision was challenged in this Court where it was held that the CMA has no jurisdiction (annexure V6). The applicant then filed his claim to the Labour Division and on 09/02/2023 the suit was withdrawn on the reason that the Labour Court has no jurisdiction over cases of Judicial Review. This is an indication that the applicant was not negligent in pursuing his right, he was actively pursuing his right, but as was pressed unfortunately on the wrong forum as he was a layperson not understanding the legal procedure.

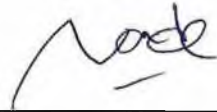
Now counting from 09/02/2023 when he withdrew his application to 28/02/2023 when he filed this application it is a total of 19 days that the applicant must account for. Under paragraph 17 of the affidavit,

the applicant stated that he was waiting for a copy of the order which he eventually got on 20/02/2023, he then prepared his application and filed it on JSDS on 24/02/2023. I find 19 days reasonable as the applicant was waiting for the order, and after receiving the order he was preparing the necessary documents in order to institute this application. The allegation by the respondents' counsel that they raised an objection before the CMA and the applicant preferred to continue with the case, is unfounded as it was out of the control of the applicant because it was the CMA who had misdirected itself, proceeded to overrule the preliminary objection and continued with the hearing of the Application.

I am satisfied that the Applicant has demonstrated sufficient reasons for an extension of time to grant. The application is accordingly allowed. The Memorandum of Appeal has to be lodged within 30 days from the date of this Ruling. No orders as to costs.

It is so ordered.

**DATED at ARUSHA this 24th day of November 2023**



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**A. Z. Bade**  
**Judge**  
**24/11/2023**

Judgment delivered in the presence of the Parties and or their representatives in chambers on the **24th** day of **November 2023**



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**A. Z. BADE**  
**JUDGE**  
**24/11/2023**