IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM MAIN REGISTRY)
AT DAR ES SALAAAM

MISC.CIVIL APPLICATION No. 33 OF 2023

FELISTER PHILIPO KADEGE..... APPLICANT
VERSUS
THE COMMISIONER GENERAL OF TANZANIA
IMMIGRATION SERVICE DEPERTMENT ....1ST RESPONDENT
THE PERMANENT SECRETARY,
MINISTRY OF HOME AFFAIRS..... .....2ND RESPONDENT
THE POLICE FORCE, PRISON, FIRE AND
RESCUE FORCE AND IMMIGRATION
DEPARTMENT..... 3RD RESPONDENT
THE ATTORNEY GENERAL..... 4TH RESPONDENT

RULING

14th &20th November,2023

CHUMA, J:

This is an application for an extension of time within which to allow the applicant to apply for leave to seek judicial review. The application is brought under section 14 (1) of the Law of Limitation Act, Cap. 89 R.E 2019 and section 2 (1), (3) of the Judicature and Application of Laws Act, Cap. 358 R.E 2019.

A brief account of facts giving rise to this application is found in the affidavit in support of the application sworn by the applicant. In 2017, the applicant, being an employee of the respondent in the post of Assistant Inspector, was arraigned before the Court of Resident Magistrates of Songwe

Region at Vwawa facing criminal charges in Economic Crime Case No. 5 of 2019. While the case was still pending in court, the respondent suspended the applicant from employment. The case was later concluded by the applicant entering a plea-bargaining agreement with the Director of Public Prosecution. The end of that case turned things sour after the 3rd respondent served the applicant with a letter of termination effective from 14th April 2020. Dissatisfied with termination, the appellant's attempt to reverse that decision by way of appeal to the 3rd respondent was not successful.

Through the letter dated 21st February 2023, the 3rd respondent informed the applicant that pursuant to section 7(3) of the Police Force and Prison Services Commission Act of 1990, it had no jurisdiction to entertain the appeal. The applicant was therefore advised to channel her appeal to an appropriate forum with competent jurisdiction.

Owing to the foregoing, the applicant's complaint from paragraph 10 of the affidavit is to the effect that the decision by the 3rd respondent on appeal was not communicated to her timely because she became aware of it on 24th August 2023, that was after making some physical follow-ups to the 3rd Respondent's Office at Dodoma. She added that the decision of the 3rd respondent dismissing her appeal is tainted with illegalities to wit, the 3rd

respondent had no jurisdiction to terminate the applicant from employment and there was no formal charge laid against her.

On the day of hearing this application, Mr. Mwang'eza Mapembe, learned advocate represented the applicant and the respondent enjoyed the services of Ms. Caroline Lyimo and Messrs. Kaonekara Jamal and Salim Athman Salum, learned State Attorneys.

After adopting the affidavit in support of the application, Mr. Mapembe commenced his submission by drawing the attention of this Court to its discretionary power vested under section 14 (1) of the Law of Limitation Act that such power must be exercised judiciously based on good grounds or cause. The learned advocate while referring to paragraph 10 of the affidavit and exhibit LLA – 2, contended that until 24th August 2023 when the applicant became aware of the dismissal of the appeal, six months period to file leave in terms of rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, GN No. 324 of 2014, against the decision of the 3rd respondent had already expired. After that, in his view, the applicant has been diligent enough because she brought this application on 5th September 2023, twelve days later which according to him was not an inordinate delay. Supporting his

points, Mr. Mapembe referred the Court to the case of **Lyamuya Contribution Co. Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Appeal No. 2 of 2010 (unreported) which underscored the prerequisites for extension of time and **African Banking Corporation (T) Limited vs George Williamson Ltd,** Civil Application No. 349/01 of 2018.

In opposition, Ms. Glory was unprepared to go along with Mr. Mapembe's submission. She replied that the applicant was negligent and lacked diligence in pursuing her matters. She also argued that the applicant's assertion of being unaware of the decision of the 3rd respondent and the allegation that the applicant received the information on her dismissal from a front desk person at Dodoma, did not constitute good cause for her delay as both were unsupported. Regarding the twelve-day delay, Ms. Glory was of the opinion that that period was not accounted for. She reinforced her stance by citing the case of **Ramadhan Rashid Kitima vs Anna Ally Senyangwa,** Misc. Land Application No. 3 of 2023.

Having carefully examined the submissions from both parties as well as the affidavits in support of the application, it is apposite to state at the outset that according to section 14(1) of the Law of Limitation Act, the

Court has powers to grant an extension of time for the institution of an application upon the applicant showing reasonable or sufficient cause. Such power is not only discretionary and unfettered but must be exercised judiciously in line with the rules of reason and justice not according to private opinion or arbitrary. The overriding consideration is that there must be"sufficient cause" for so doing. There are numerous authorities on this, for instance, the cases of **Tanga Cement Co. Ltd vs Jumanne D. Masangwa & Another** (Civil Application 6 of 2001) [2004] TZCA 45 (8 April 2004) TanzLII, and **Frady Tajiri Chawe (As Administrator of the Estate of the Late Donatus Chawe Sanga) & 443 others v. TANESCO**, CIVIL APPLICATION NO. 505/18 OF 2019, to mention a few.

For the foregoing, the issue is whether the applicant has accounted for the whole period of delay. Parties are not in dispute that the applicant's employment was terminated by the 3rd respondent on 14th April 2020 and her efforts to challenge that decision by way of appeal failed after being informed through a letter dated 21st day of February 2023 that the 3rd respondent had no jurisdiction to entertain the appeal. It is further not in dispute that after the 3rd respondent's decision, the applicant failed to pursue her application for leave to apply for Judicial Review within six months

dictated under section 19(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [CAP. 310 R.E. 2019].

Furthermore, the applicant's averment in paragraph 10 of the affidavit supported by annexture LLA - 6 that it was not until 24th August 2023 when she became aware of the fact that her appeal was dismissed, was not resisted by Ms. Glory, for the respondents. The question is whether the period of twelve days from 24th August 2023 to 5th September 2023 when the present application was lodged, is inordinate and has not been accounted for. In **Usangu Logistics T. Limited vs Soedtra Sprl Limited** (Civil Application 47 of 2021) [2023] TZCA 208 (28 April 2023) TanzLII, the Court of Appeal held that for an application of extension of time to be granted, the applicant must account for every day of the delay, delay of even one day renders a matter incompetent. Upon perusal of the affidavit in support of the application and taking into account Mr. Mapembe's submission, undoubtedly, the period of twelve days of delay has not been accounted for to justify why the applicant failed to lodge her application timely.

However, Mr. Mapembe was right that the lapse of twelve days period was not an inordinate delay. It is common knowledge that determination on whether the period of delay is inordinate, each case has to be taken in

accordance with its circumstances. In **Zuberi Athumani Mbuguni v. National Bank of Commerce Limited** (Civil Application No.311/12 of 2020) [2023] TZCA 17290 (1 June 2023), upon satisfaction that the applicant took all steps promptly and there was no laxity on his part, the Court of Appeal concluded that the twelve days which lapsed before lodging the application was too short a time to condemn the applicant that he did not act promptly. Likewise in **Benjamin Elikana Masota @ Benjamin Masota vs Omega Fish Limited**, Civil Application No.540/08 of 2022) [2023] TZCA 17539 (22 August 2023 TanzLII), upon scrutiny of the circumstances, the single Justice of the Court of Appeal held that a delay of a month for effecting service of the copy of the letter on the respondent's advocate can be said to be unusually excessive. On the strength of the above legal position in the light of the circumstances of the present application, I find that the delay of twelve days was not inordinate. Besides, the facts gathered from the affidavit suggest that the delay was not of the applicant's own making.

Next issue for consideration, the applicant is moving the Court to grant the application on the ground that there are illegalities in the decision of the 3rd respondent to terminate her employment. The learned advocate for the

applicant submitted that termination of the applicant was unprocedural conducted as she was not formally charged before the disciplinary authority hence curtailing her right to be heard. He submitted further that the 3rd respondent high-jacked the powers of the Commissioner General of Immigration who, in terms of regulation 27 (2) of the Immigration Service (Administration Regulations of 2018, G.N No. 473, has a disciplinary mandate to any Immigration Officer of the rank of Assistant Inspector to the rank of Assistant Commissioner. Any party aggrieved by the decision of a Disciplinary Authority has a right to appeal to the 3rd respondent.

Explaining further on the procedure of charging the Immigration Officer and the disciplinary hierarchy between the 3rd respondent and Commissioner General of Immigration, Mr. Mapembe implored this Court to have a glance at regulations 34 (1) read together with Item dd Part B of the Schedule, 37 (1) (8), 43 (6), (c), (7) and 44 (1) (a) – (e) of the G.N 473. According to Mr. Mapembe, the 3rd respondent failed to comply with any of the requirements envisaged under the above provisions for there were no formal proceedings conducted against the applicant. To him, being denied the right to be heard is by itself an illegality sufficient to warrant an extension of time. Mr. Mapembe supported his proposition with the case of the

Principal Secretary, Ministry of Defence & National Service vs Derp Vhalambia, [1992] T.L.R 182.

Responding to the alleged illegalities, Ms. Glory did not have a word on whether or not the applicant was condemned unheard. Rather, she urged the Court to not find merit in the complaint because what the applicant did was nothing but forum shopping by appealing while a proper remedy should be an application for judicial review. Finally, Ms. Glory maintained that since the applicant failed to account for each day of delay, illegality on its own is not sufficient to make the Court extend time. She therefore prayed for the dismissal of the application with cost.

The law on illegalities as a ground for extension of time is settled that whenever it is raised and relied upon by the applicant, it suffices to constitute sufficient reason for extending time. In **Principle Secretary, Ministry of Defence & National Service v. Devram Valambhia** [1993] T. L. R. 91, the Court had an opportunity to consider the issue of illegality and held thus:

> "When the point at issue is one alleging illegality of the decision being challenged, the Court has a duty even if it means extending the time for the purpose to ascertain the point and, if the alleged illegality be established, to

take appropriate measures to put the matter and the record right;

It is again settled law that illegality must be apparent on the face of the record of the decision sought to be challenged and that not any error on a point of law constitutes an illegality. This was cemented in **Charles Richard Kombe v. Kinondoni Municipal Council**, Civil Reference No. 13 of 2019) [2023] TZCA 137 (23 March 2023) TanzLII that:

> "...it is our conclusion that for a decision to be attacked on ground of illegality/ one has to successfully argue that the court acted illegally for want of jurisdiction, or for denial of right to be heard or that the matter was time barred. In **Chunila Dahyabhai v. Dharamshi Nanji and Others**, AIR 1969 Guj 213 (1969) GLR 734, which we find persuasive, the following paragraph was quoted from the decision of the Supreme Court of India in AIR 1953 SC 23:- "„.the words Illegally' and 'material irregularity' do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not errors of either law or fact after the formalities which the law prescribes have been complied with..."

Guided by the above pronouncements. The applicant is faulting the 3rd respondent for conducting disciplinary proceedings in which it had no jurisdiction. It is also the argument of the applicant and her advocate that since there were no formal proceedings, the applicant was curtailed the right to be heard. In my opinion, those arguments are not only apparent and attractive but also tenable. It is apparent that the 3rd respondent terminated the applicant's employment but the procedure applied, as far as the record at hand is concerned, is not clear, maybe until the parties are heard in that respect. In addition, regarding disciplinary powers under section 7(3) of the Police Force and Prison Services Commission Act and rule 27 (2) G.N No. 473 of 2018, it is also clear that both the Commissioner General and the Police Force Immigration and Prison Service Commission (3rd respondent) are two decision making bodies on disciplinary matters but there is no indication if the two acted according to the law to terminate the applicant's employment.

I therefore find that the points of illegalities raised in the notice of motion, affidavit, and expounded on in the rival oral submissions constitute good cause to extend time.

All said the application is granted. The applicant is ordered to lodge the application for leave to apply for Judicial Review within thirty days from

the date of the delivery of this ruling. Each party shall bear its own costs in this application.

It is so ordered.

DATED at **DAR ES SALAAM** this 20th day of **November 2023**.

W.M. CHUMA

JUDGE

20/11/2023