

**IN THE HIGH COURT OF TANZANIA  
SUB-REGISTRY OF GEITA  
AT GEITA**

**MISCELLENOUS CAUSE NO. HC/GTA/CIV/MC/5407/2024**

**IN THE MATTER OF LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS  
PROVISIONS) CAP. 310 R.E 2019**

**AND**

**IN THE MATTER OF THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY  
FOR ORDERS OF MANDAMUS AND CERTIORARI**

**BETWEEN**

**JOSEPH FRANCIS GAMA .....APPLICANT**

**AND**

**THE ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**CHIEF SECRETARY.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 26/03/2024*

*Date of Ruling: 26/03/2024*

**K. D. MHINA, J.**

The application before me is for leave to file an application for judicial review made under Rules 5 (1), (4) (5) and 7 (1) (2) (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. [Hereinafter to be referred to as the “**Rules**”

It is against the decision of the President of the United Republic of Tanzania to terminate the applicant's employment. The decision was made on 21 August 2023, as stated in the applicant's statement of fact, verified by the applicant's affidavit supporting the application.

The affidavit also indicated that the decision sought to be challenged was made on 21 August 2023. The affidavit had Annexures in relation to the decision sought to be challenged.

Briefly, the applicant was employed in public service as a teacher, ranked Grade III B, and stationed at Chato District within the Region of Geita.

In 2015, he was charged by his employer for insubordination and other misconduct. Therefore, he was required to submit his defence, which he did by submitting on 13 August 2015.

On 5 April 2018, the Teachers Service Commission of Chato District, vide Misconduct Cause No. 2 of 2018, terminated the applicant's employment for insubordination and absenteeism from work.

Undaunted, the applicant appealed to the Tanzania Teachers Service Commission (TSC). In its meeting No. 02 of 2018/19 dated 03-08 December 2018, the TSC dismissed the applicant's appeal and confirmed the decision of the Chato District Teachers Service Commission.

In discontent, the applicant again filed the appeal before the President of the United Republic of Tanzania on 3 May 2019.

On 21 August 2023, the President of the United Republic of Tanzania dismissed the applicant's appeal.

Again, the applicant was aggrieved, and he decided to file this application for leave to file a judicial review against the respondents with the intention of petitioning for an order of certiorari to quash his termination and mandamus to reinstate his employment.

At the hearing of the application, the applicant was represented by Mr. Jeremia Shija Advocate, who was holding a brief of Mr. Yisambi Siwale Advocate, with instructions to proceed. On the other hand, Mr. Felician Daniel, State Attorney, represented the respondents.

However, before hearing the application, *suo mottu*, I prompted the parties to satisfy this Court on its propriety. I also wanted to satisfy myself on whether the application was filed within time.

Therefore, I invite the parties to address this Court on that issue.

Immediately after taking the floor, Shija Advocate conceded that the application for leave was filed out of time. He stated that the final decision by the President of the United Republic of Tanzania was delivered on 21

August 2023, while the application was filed on 27 February 2024, and the Court fees were paid on 13 March 2024.

He further stated that in this matter, the six (6) months expired on 21 February 2024.

Though he raised an issue that the applicant was served with Her Excellency the President's last decision on 27 September 2023, a month later, he admitted that the law is clear and the **rules** provide that the application should be filed within six months from the date of the last decision. Thus, the application was filed out of time.

In response, Mr. Daniel, State Attorney, did not "press" for costs for the remedy after the counsel for the applicant admitted that the application was time-barred.

Having the parties, the issue before me is whether or not the application for leave to file judicial review is time-barred.

First, it should be noted that since the limitation issue touches and goes to the court's jurisdiction, it can be raised at any time. This is a settled position by the Court of Appeal in a plethora of authorities. In **Yusuf Khamis**

**Hamza vs. Juma Ali Abdalla, Civil Appeal No. 25 of 2020** (Tanzlii),

the Court of Appeal held that: -

*"We are alive with the settled position of the law that time limitation goes to the Jurisdiction issue of the Court, and it can be raised at any time."*

On the merits of the application, the issue of time limitation, as conceded by the counsel for the applicant, is very straight.

According to Rule 6 of **Rules**, the provision is explicit that an application for leave must be filed within six months of the act or omission to which it relates. It reads:-

*"6. The leave to apply for judicial review shall not be granted unless the application for leave is made **within six months after the date of the proceedings, act or omission** to which the application for leave relates". [Emphasis provided]*

In this application, the last proceedings to which the applicant was aggrieved was the decision of the President of the United Republic of Tanzania, delivered on 21 August 2023.

On the other hand, this application was submitted online for admission on 27 February 2024, and the Court fees were paid on 13 March 2024.

Therefore, as rightly submitted by Mr. Shija, by looking at the date of the decision, the applicant seeks to challenge, i.e. 21 August 2023, six (6) months expired on 21 February 2024. Thus, on the date the applicant paid the court fees, the application was already time-barred. Even on the date he submitted his application online, on 27 February 2024, the application was already out of time.

Flowing from above, since the application was lodged beyond the prescribed time and because the limitation goes to the jurisdiction of this court, then this court lacks the jurisdiction to proceed with this application.

As to the way forward, the **Rules** do not prescribe the consequences where proceedings are instituted out of time. In such circumstances, the “leeway” is provided by section 46 of the Law of Limitation Act, Cap 89 (the LLA), which reads that:-

*46: Where a period of limitation for any proceeding is prescribed by any other written law, then, unless the contrary intention appears in such written law, and subject to the provisions of Section 43, the provisions of this Act shall apply as if such period of limitation had been prescribed by this Act.*

As I alluded to earlier, the **Rules** provide a time limit to institute the application for leave but do not provide for the consequences upon the application, which was filed out of time.

Therefore, as the LLA provides where a period of limitation for any proceeding is prescribed by any other written law, the provisions of the Law of Limitation apply as if such period of limitation had been prescribed by the Law of Limitation Act. The same law also has a provision for the consequence where a proceeding is instituted out of time without leave of the Court.

Section 3 of the LLA provides that;

*"3(1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, **shall be dismissed** whether or not limitation has been set up as a defence". [Emphasis provided]*

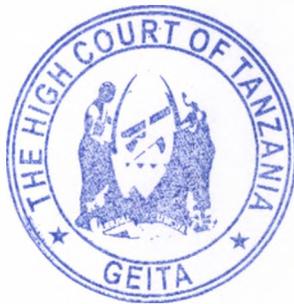
On the applicability of section 3 of LLA in applications such as this, the Court of Appeal in **Hezron M. Nyachiya vs. Tanzania Union of Industrial and Commercial Workers and another**, Civil Appeal No. 79 of 2001 (Tanzlii), held that;

*"Since under Section 46, where a period of limitation for any proceeding is prescribed by any other written law, the provisions of this Act shall apply, it is our considered view that, Section 3 of the Law of Limitation applies also in respect of proceedings instituted under the (Fatal Accidents and Miscellaneous Provisions) Ordinance"*

Therefore, since there is no dispute that the application was filed out of time, this Court lacks jurisdiction to determine the same.

Consequently, I dismiss this application, and since the matter was raised *suo motu*, I make no order as to costs.

It is so ordered.



  
**K. D. MHINA**

**JUDGE**

**26/03/2024**