

TANZANIA / JUDGMENT

BENEDICT IHUYA MAYENGA

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA MISC. APPLICATION NO. 121 OF 2023 BENEDICT IHUYA
MAYENGA..... APPLICANT VERSUS THE TEACHERS SERVICE
COMMISSION.....1ST RESPONDENT THE ATTORNEY
GENERAL.....2ND RESPONDENT

RULING

26th March & 23rd April, 2024 ITEMBA, J. The applicant hereinabove has applied before this court for an order of extension of time within which to apply for leave to lodge an application for Judicial Review against the decision of the first respondent in terminating his employment. The application is supported by an affidavit deposed by Benedict Ihuya Mayenga the applicant himself while it is opposed by the counter affidavit of Allen Mbuya, learned state attorney. The brief background towards this application is that; in 1986 the applicant herein was employed as a teacher at Kimiza Primary School, within Kwimba District. His employment was terminated by the 1st respondent through a letter with Reference No. KW/PCF/TSC/M.34694/9 dated 1 25/03/2020. The applicant appealed to the Hon. President of United Republic of Tanzania. By a letter dated 5/8/2022 his appeal was dismissed. On 5/2/2023 the applicant filed an application for leave to file for judicial review before this court. His application was struck out for being time barred and for lacking cause of action against the District Executive Director Kwimba District Council, hence this application. When the application was scheduled for hearing, the applicant was represented by Maligisa Sakila learned Advocate while Mr. Allen Mbuya State Attorney, represented the respondents. For the application Mr. Sakila submitted that, after the decision of the 1st respondent, the applicant went through different processes including appealing to the President in accordance with the law. That, the decision of the President was communicated to him on 16/9/2022. That, under he initially filed the application for leave to file judicial review vide Application No. 28/23 before this court which was within time but it was struck out on 4/8/2023 for being incompetent. That, on 5/8/2023 the applicant sought legal aid from Tanganyika Law Society (TLS) and he was granted on 18/8/2003 and this application was filed on 20/8/2023. That, the applicant was not negligent because he made all the efforts since his previous 2 application was struck out and in between he faced financial constraints having lost his job. In reply Mr. Mbuya submitted that, the application is brought under section 14(1) of the Law of Limitation Act Cap 89 R.E 2019 therefore there must be sufficient cause. That, although the definition of

sufficient cause is not given, case laws have defined it including the case of Lyamuya Construction CO. Ltd v Board of Registered Trustees of YWCA Civil Application no. 2 of 2010 CAT Arusha of which there are 4 principles therein. That, according to Paragraph 9 of the affidavit, the applicant came into awareness of the President's decision on 16/9/22 but in the said decision annexure BM6 it is dated 5/8/2022. That, under Rule 6 of the Law Reforms (Fatal Accidents and Miscellaneous Provision) (Judicial Review Procedure and Fees) Rules, 2014 (herein the Rules,) the time limitation for filing applying for leave is within 6 months, therefore, counting from 16/9/2022 and 20/8/23 the applicant is late by 5 months and 4 days. That, under Paragraph 10 of the affidavit the applicant claims his application was struck out but because the said application was incompetent, it cannot therefore be argued as technical delay was involved. That, the application was dismissed for 2 grounds. One it was time barred and there was no cause of action against the the District Executive Director Kwimba District Council. 3 That, the decision of Kwimba District Executive Director was not exhausted as the law required. Therefore, to him, the applicant was negligent and negligence cannot stand as a ground for extension of time. The learned state attorney argued further that, financial issues cannot stand as a ground for extension. In this, I was referred to the case of Wambele Mtumwa Shahame v Mohamed Hamis Civil Refence non 8/2016 CAT Dar es salaam.pg 11&13 and Hamis Mponda v NICCO Insurance TANZANIA LTD and 2 others Civil Application No. 254/01 of

2021. That, the applicant had only 2 years left to retire, this shows that he was capable to prosecute his case, his first case No 28/23 was not under pro bono basis. He therefore prays that the application be dismissed with costs. In rejoinder Mr. Sakila submitted that, Application No. No 28/23 was filed within time. That, the decision of Wambele Mtumwa Shahame is distinguishable because in that case, the applicant was looking for money to engage an advocate while in this case, the applicant did not have capacity to engage an advocate but he needed time to engage an attorney from TLS. In the case of Hamis Mponda, the applicant was a widow but in this case the applicant did not have capacity that is why TLS aided him. 4 I have considered the submissions of both parties. I will now determine whether the applicant has sufficient reason for extension of time. In assessing whether the application has merit, as rightly submitted by the respondent's counsel, the law is settled that, a party seeking an order for extension of time has to adduce sufficient reason(s) which prevented him to act within time. See Regional Manager Tanroads Kagera v Ruaha Concrete Company Ltd, Civil Application No.96 of 2007 Court of Appeal. Apart from advancing sufficient reasons, the applicant needs to account for each day of delay. See Omari R. Ibrahim v Ndege Commercial Services Ltd, Civil Application No. 83/01 Of 2020; Hassan Bushiri v Latifa Mashayo, Civil Application No. 3 of 2007; and Dar es Salaam City Council vs. Group Security Co. Ltd, Civil Application No. 234 of 2015 (all unreported) In the present application, the applicant has advanced two reasons that is, technical delay and financial constraints. It is a settled principle that when the applicant was prosecuting other proceedings in court, that period of prosecuting may be taken into account as stated in the case of Fortunatus Masha v William Shija & Another [1997] TLR 154; Mathew T. Kitambala v Rabson Grayson and another, Criminal Appeal No. 330 5 of 2018; and Bharya Engineering

&Contracting Co. Ltd v Hamoud Ahmed Nasor, Civil Application No. 342/01 of 2017 (both unreported). In this matter at hand, I have read the ruling in Misc. Application No. 28 of 2023. It refers to an application for leave to apply for judicial review against the District Executive Director Kwimba District Council and the 2nd respondent. The 1st respondent was not a party to the said application. The application faced two points of preliminary objection that it was time barred and that the applicant has no cause of action against District Executive Director Kwimba District Council. Both preliminary objections were sustained that the applicant never appealed against the decision of District Executive Director Kwimba District Council hence his application was time barred and that he had no cause of action against the former. In consideration of the applicant's grounds for delay, I will start with Rule 6 of the Rules which set the time limitation. It states that; '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.' It is in records that, the applicant was pursuing his rights administratively between 2017 when his employment was terminated and 6 5/8/2022 after the decision by the President's office was finally issued. It means therefore, the six months' time limitation to file this application started running against the applicant from 5/8/2022. The deadline being 5/2/2023. However, according to the annexed chamber summons of application no. 28 of 2023, which was struck out, it was filed online on 5/2/2023 and relevant payment were made on 10/3/24 and it was admitted on the same day. Pleadings are considered properly filed before the court when it is filed online and necessary court fees have been duly paid. Now, between 5/2/2023 and 10/3/2023 there are 33 days which are not accounted for. In rejoinder Mr. Sakila did not dispute this fact of unaccounted days. Therefore, the applicant has failed to account for each day of delay. Regarding the second ground of financial constraints, I agree with the applicant that it is cardinal law that, financial constraints, under exceptional circumstances, may be sufficient to stand as good reason for extension of time especially when the applicant falls under the category of legal aid. See the cases of Costantine Victor John v Muhimbili National Hospital, Civil Application No. 214/18 of 2020 and Yusuph Same and another v Hadija Yusuph, Civil Appeal No. 1/2002 (both unreported). There is no dispute that Mr. Maligisa Sakila was appointed on 18/08/2023 by TLS to represent the applicant after the ruling in Misc. 7 Application No. 28 of 2023. However, this would have been good reason for extension of time if the applicant managed to account for those 33 days between 5/2/2023 and 10/3/2023. As explained above, he has failed to do so. To conclude, I find this application without merit and I proceed to dismiss it. For the applicant is represented under pro bono basis I order no cost. It is so ordered. DATED at MWANZA this 23rd Day of April, 2024. L. J. ITEMBA JUDGE Ruling delivered under my hand and seal of the court, in the presence of the applicant, Mr. Maligisa Sakila and Felician Daniel, State Attorney for Respondent and Ms. G. Mnjari RMA. L. K. J. ITEMBA JUDGE 8

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