

TANZANIA / JUDGMENT

ELIGIUS MUTASHOBYA BAGENYI VS CHIEF SECRETARY

COURT
TANZLIIDECIDED
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IN THE HIGH COURT OF TANZANIA DODOMA SUB REGISTRY AT DODOMA MISC CIVIL
APPLICATION NO 21261 of 2024 BETWEEN ELIGIUS MUTASHOBYA
BAGENYI.....APPLICANT VERSUS CHIEF SECRETARY
.....1ST RESPONDENT THE ATTORNEY
GENERAL.....2ND RESPONDENT

RULING

Date of last Order: 07/11/ 2024 Date of Ruling: 03/12/ 2024 LONGOPA, J.: This is an application for extension of time to file an application for judicial review for orders of certiorari against the 1st respondent. On 29th August 2024, the applicant preferred this application under section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2019. The applicant was once employed by the Government of the United Republic of Tanzania through Singida Municipal Council as a Teacher Grade II until 15th March 2021 when he received a Letter of Termination of Employment with effect from 13th July 2019. This decision was challenged 1|Page before the Tanzania Teachers Service Commission that confirmed the decision of the Disciplinary Authority. It is at that juncture, when the applicant appealed to the President of the United Republic of Tanzania. The result was not different apart from affirmation of the decision of the Disciplinary Authority and the first appellate body. The applicant being still aggrieved with such decision approached this Court for an application for leave to file an application for judicial review for orders of certiorari. Indeed, the Court granted the leave to file judicial review. However, the applicant did not act promptly thus necessitating the filing of this application for extension of time. As a result, the applicant on 29th August 2024 instituted an application for extension of time to file an application for judicial review under section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2019 for the following Orders, namely:

1. That this Honorable Court be pleased to grant the extension of time within which the Applicant to file an application for Judicial review to apply for orders of certiorari against the 1st Respondent herein. 2|Page

2. Any other order (s) that this Honorable Court deems fit and just to grant be granted On 7th November 2024 when the matter was scheduled for hearing the applicant enjoyed the legal services of Mr. Fred Kalonga, learned advocate and the respondents enjoyed the legal services of Mr. Erasto Barua and Omary Ngatanda, both learned State Attorneys. In arguing the application, Mr. Fred Kalonga, learned advocate stated that applicant has applied for extension of time under Section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2019 where he seeks extension of time to file an application for Judicial Review for the orders of certiorari against the 1st respondent. The counsel for applicant adopted the affidavit of the applicant one Eligius Mutashobya Bagenyi to form part of applicant's submission before the Court. In the submission, the applicant reiterated that on 24/01/2011 the applicant was employed as a Teacher Grade II at the Municipal Council of Singida and on 06/02/2018 he was transferred from Mungumaji Secondary School to Ugauga Primary School in a programme that intended to 3|Page rationalization of work force by transferring extra Arts subjects teachers from Secondary Schools to Primary Schools. According to the applicant, on 19/11/ 2018, the applicant was served with lumpsum documents including Notice of Disciplinary hearing and Charge Sheet dated 24th October 2018 on allegation of absent from work from 2nd July 2018 to 7th August 2018. At the same time, the applicant was suspended from work dated 24th October 2018 as contained in Annexure E1 to E3 collectively. It was further argued that on 15/03/ 2021 the applicant received a dismissal letter from employment. He noted that the Disciplinary Authority vide Complaint No 2019/ 2021/01 dismissing the applicant effective from 20th July 2019. However, the applicant was not served to be heard and advance/ state his mitigation before the sentence was passed. The applicant referred to Annexure E4 of the affidavit as lucid explaining this aspect. The applicant further stated that having been aggrieved by the decision on 22/12/2022 he filed an appeal to the Teachers Service 4|Page Commission whereas upon hearing of the appeal the Commission did confirm the termination of the applicant. It is at that juncture where the applicant appealed to the President who upheld the decision of the Disciplinary Authority. It was the applicant's submission that on 10/10/2023, the applicant applied for the leave to file Judicial Review which was granted on 9th July 2024 Hon Khalfan J. and that the applicant was required to file an application for Judicial Review within fourteen (14) days of the grant of leave to file the application. According to the applicant, on 19th July 2024 the applicant requested for ruling and the same was secured on 22/08/2024 by the applicant which form part of the affidavit as Annexure E7. Indeed, the applicant was out of time to file the application for 37 days attributed by failure get the ruling timely. The applicant believes that the application for Judicial Review has merits and that the reasons were beyond his control and if the same is not granted the applicant shall suffer irreparable loss as it touches on his livelihood. It was the applicant humble submission and prayer that the applicant has good grounds for the same thus this application be granted. 5|Page The Counsel for the respondents, Mr. Erasto Barua stated that the applicant was granted leave on 9th July 2024 but he failed to comply with same as the applicant admitted to have been late by thirty-seven (37) days to file the application for Judicial Review. According to the respondent, Rule 8(1) of the Judicial Review Rules of 2019 requires that once the leave is granted it is only period of

14 days allotted for filing the same. There is no requirement for the ruling or drawn order is required to be attached. The court cannot entertain the ground that is not envisaged by the law. It was reiterated that ignorance of the procedure is not a defence as the principle in the case of Ngao Godwin Losero versus Julius Mwarabu, Civil Application No 10 of 2015 where the Court of Appeal of Tanzania, at page 6 - on account of delay ignorance of the law is not a defence thus should be dismissed. Also, it was argued that there is no requirement in the law on attaching the ruling. Paragraph 9 of the affidavit is doubtful as the ruling is 6|Page indicated to have been secured in 2023. According to respondents, the applicant has failed to account for every day of delay. This application was filed in 29th August 2024. There is no accounting of delay from 09/07/2024 to 19/07/2024 and these are not stated at all. It means that the applicant slept on his own rights. There is no explanation on the time spent for preparation of the documentations from 22/08/2024 to 29/08/2024. As such, the respondent's counsel was of the firm view that the applicant has miserably failed to account fully for the days. It was reiterated that delays should not be inordinate as in the instant application, filing of the application was inordinate as it took long time unnecessarily. There was negligence on the side of applicant in handling this matter as the application for leave was attended by this court granting the same but the responsible whereas the applicant out to have been guided by principles stated in Lyamuya Construction Ltd Case where the Court of Appeal at page 6 elucidated criteria to be considered for the extension may be formulated, namely:- (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 7|Page take, and not engaged in the whole; (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged. It was the applicant's firm submission that the applicant has not substantiated the reasons for grant of extension of time. It was thus respondents' view that the application lacks merits thus the same should not be granted. In short rejoinder, the applicant stated that it is true that under Rule 8 of the Judicial Review Regulations, the copy of ruling granting leave is not necessary, it is submitted that such argument is misinterpretation of the law. However, there is Rule 5 of the Judicial Review Rules which requires that leave must be attached to the application for Judicial Review. It was argued that the Ngao case is distinguishable as it related to the leave to appeal to the Court of Appeal. This instant application relates to the filing of Judicial Review thus applying for the ruling on 19th July 2024, it was well within 14 days that were permissible. The applicant signed to the dispatch book indicating that the ruling was collected only on 8|Page the date of ruling. He could not have filed the application for judicial review in absence of the leave. With regard to question of the applicant having failed to act timeously, it was reiterated the applicant was represented was represented and the instructions ended on 09/07/2024 after the declaration of granted leave to file judicial review. The decision was not availed/ granted timely to the applicant to process the application for Judicial Review. Further, it was stated firmly that there was no negligence on the part of the applicant as the application it was promptly filed by the applicant. It is humble submission of the applicant that as the Court granted leave, it

is the applicant view that grant of extension of time would allow the applicant to exercise the leave already granted by the same honourable court. Having heard the rival submissions by the parties to this application, it is pertinent duty of this Court to determine the validity of this application in light of the grounds for the same as contained in the affidavit in support of the application. 9|Page It is on record that this is a second bite in terms of the applicant having approached the Court previously for leave. The applicant was granted leave to file an application for judicial review for orders of certiorari but he did not act timeously. It is the applicant's wishes that this Court be pleased to extend time to file an application for judicial review. The law on timing of filing the judicial review is stipulated in the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 GN No. 324 dated 5th September 2014. It states that: 8.-(1) Where a leave to apply for judicial review has been granted, the application shall be made:

- (a) by way of chamber summons supported by an affidavit and the statement in respect of which leave was granted; and
- (b) within fourteen days from the day of the leave was granted. The decision of the Court was delivered on 9th July 2024 as per contents of Paragraph 6 of the affidavit and Annexure E- which is Ruling and Drawn order collectively. The period of fourteen days came to an end 10 | P a g e on 23rd July 2024. However, it was until 19th July 2024 which was four days to the deadline the applicant wrote a letter to the Court requesting for the copies of the Ruling and Drawn Order of the Court that granted the leave to file the application for Judicial review. It is on record that the basis of the applicant's submission that he failed to file an application for review as a result of delay caused by the non-procuring of the copies of the ruling and drawn order which were necessary for the application for judicial review. These are the contents of Paragraphs 7, 8 and 9 of the applicant's affidavit. The application casts blame on the court for not availing the copies of the ruling and drawn order timely to allow the applicant to file the application. This court has seriously considered the assertion that time spent to follow up the ruling and drawn order in delayed filing of the application for judicial review. Two aspects are important. First, the letter requesting for copies of the ruling and order was made on 19th July 2024 upon expiry of ten days from the date of the decision. Second, there is no provision in the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 requiring that a copy of ruling and drawn 11 | P a g e order granting leave must be attached. Both Rules 5 and 8 of the Judicial Review Rules are conspicuously silent on the need to attach such ruling and its drawn order as prerequisites for the filing an application for judicial review. It would appear that applicant wishes to invoke the exclusion of time spent in following up the copies of the ruling and drawn order in terms of Section 19(2) and (3) of the Law of Limitation Act, Cap 89 R.E. 2019 that provide for automatic exclusion of time spent to obtain the copy of judgment, decree or order. By extension, the provision might be applicable to cater for ruling and drawn order. For instance, in the case of Alex Senkoro & Others vs Eliambuya Lyimo (Criminal Appeal 16 of 2017) [2021] TZCA 104 (13 April 2021) (TANZLII), at pages 10-11, the Court of Appeal stated that: To begin with, we have indicated that the parties are not at issue

on the applicability of the exclusion envisaged under sub-sections (2) and (3) of section 19 of the LLA. These sub-sections provide in clear terms that: 12 | P a g e "(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.

- (3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall be excluded. " We entertain no doubt that the above sub-sections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made upon an order of the court in a formal application for extension of time. Further, in the case of Bukoba Municipal Council vs New Metro Merchandise (Civil Appeal 374 of 2021) [2022] TZCA 413 (11 July 2022) (TANZLII), at pages In the present appeal we have shown herein that the crucial issue before the High Court was whether an exclusion of time provided under section 19 (2) of the LLA 13 | P a g e is subject to an order of the court. Given the clear position of the law that section 19 (2) and (3) of the LLA provides for an automatic exclusion of time requisite for obtaining a copy of the decree or judgment appealed from when computing the period of limitation for lodging an appeal, the High Court ought to have automatically excluded the period between the date of judgment and the date of obtaining a copy of the impugned judgment which according to the appellant it was on 15th May, 2016. It is correct that time spent in obtaining copies of the judgment or decree may be excluded in computation of time. However, this appears to be applicable in circumstances where a copy of the judgment or decree is necessary to facilitate either an appeal against such judgment, decree or order or where the such application/ appeal is against such a judgment / decree or order. In this ruling, it has been noted that the ruling and drawn order were not necessary for the institution of the application for judicial review for the orders of certiorari. What is important is the Chamber Summons supported by affidavit and statement. 14 | P a g e Further, extension of time to file a matter out of time is a discretion of the court which must be exercise judiciously where there exists a good cause. In the case of Meis Industries Ltd & 2 Others vs Twiga Bankcorp (Misc. Commercial Cause No. 243 of 2015) [2016] TZHCComD 2127 (18 February 2016) (TANZLII), at page 6, the High Court noted that: It must be put clear that this court has discretion to extend time under section 14 of the Law of Limitation but such extension can only be exercised if sufficient reason has been given by an applicant. Only sufficient cause for the delay, and not sympathy, will make an application of this nature succeed. Indeed, the need to ensure that a good cause exists has been reiterated in plethora of authorities. For instance, In John Harald Christer Abrahamsson vs Exim Bank T. Limited & Others (Civil Application No. 468/16 of 2022) [2024] TZCA 130 (27 February 2024) (TANZLII), at pages 4-5, the Court of Appeal reiterated the principle in exercising discretionary powers. It stated that: It is trite law that, extension of time is a matter of the discretion of the Court which must be exercised judiciously according to the facts of each case. See; 15 | P a g e Mwita s/o

Mhere v. Republic [2005] T.L.R. 107 and Ngao Godwin Losero V. Julius Mwarabu, Civil Application No. 10 of 2015 (unreported). It is also common that, in applications for extension of time, the Court is required to consider whether or not sufficient cause for delay has been shown to warrant the exercise its discretion to grant the extension of time. There is, however, no definition of what amounts to "sufficient cause" but in determining whether in a particular case, sufficient cause has been established or not, a number of factors have to be taken into consideration depending on include; whether the applicant was diligent, reasons for the delay, the length of the delay, the degree of prejudice to the respondent if time is extended, whether there is a point of law or the illegality or otherwise of the impugned decision. Having considered the affidavit and counter affidavit for the parties and their respective submissions, it is the finding of this case that there are no material facts compelling this Court to exercise its discretionary powers to grant extension of time. The reasons are as follows: First, the applicant has not accounted at all for days spanning from 9th July 2024 to 19th July 2024 when a letter requesting for the copy of ruling and drawn order was filed/ received by the Court. Second, the applicant has failed to 16 | P a g e demonstrate that a copy of ruling and drawn order was a prerequisite for filing application for judicial review thus without attaching it would make the application incompetent. Neither a law nor a judicial decision was availed to the Court. Third, the applicant has not stated any efforts done between the 19th July 2024 to 21st August 2024 to follow up the copy of the ruling and drawn order of the Court in case the same was required to be attached mandatorily. Failure by the applicant to demonstrate that a good cause exists for the failure to act timeously to file an application for judicial review which is time bound, there is nothing this court can do to salvage the inaction and probably negligent action or idleness of the applicant to take relevant action. The submissions by the counsel for respondent appear succinctly that there is no reason for this Court to extend time as the applicant failed to demonstrate good cause that would have enabled the court to exercise its discretionary powers to grant extension of time. In the circumstances of the application, this court is of the settled view that the applicant failed to demonstrate any good cause for the 17 | P a g e extension of time to file an application for judicial review for the orders of certiorari given the fact that this Court granted leave to file application of judicial review but the applicant without any probable cause failed to act within time. It is view of this Court that the application for extension of time is destitute of any merits thus the same should be denied as the applicant willingly acted in negligent manner not to file the application on time as required by the law. The application therefore stands dismissed for lack of merits. It is so ordered. DATED at DODOMA this 3rd day of December 2024 E.E. LONGOPA JUDGE 03/12/2024. 18 | P a g e

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