

TANZANIA / JUDGMENT

RULING GEORGE NICHOLAUS LUTERA Final

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3 April 2025

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA SUB - REGISTRY AT MBEYA MISCELLANEOUS CIVIL CAUSE NO. 11478 OF 2024 CASE REFERENCE NO. 202405201000011478 IN THE MATTER OF THE APPLICATION TO APPLY FOR ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION BY GEORGE NICHOLAUS LUTERA AND IN THE MATTER OF LAW REFORM (FATAL ACCIDENT AND MISCELLANEOUS PROVISION) ACT CAP 310 R.E 2002 AND IN THE MATTER OF LAW REFORM (FATAL ACCIDENT AND MISCELLANEOUS PROVISION) (JUDICIAL REVIEW PROCEDURE AND FEES) RULES, 2014 (GN NO.324) AND IN THE MATTER OF GEORGE NICHOLAUS LUTERA WHO IS APPLYING FOR JUDICIAL REVIEW AGAINST THE DECISION OF THE RESPONDENTS TO TERMINATE THE APPLICANT FROM EMPLOYMENT WITHOUT FOLLOWING LEGAL, FAIR REASON AND FAIR PROCEDURE OF THE LAW Between GEORGE NICHOLAUS LUTERA APPLICANT VERSUS THE PUBLIC SERVICE COMMISSION.....1ST RESPONDENT THE PERMANENT SECRETARY FOR MINISTRY OF LIVESTOCK AND FISHERIES.....2ND RESPONDENT THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

18th March & 3rd April 2025 NONGWA, J. The applicant has applied for prerogative order of certiorari, mandamus and prohibition under the Law Reform (Fatal Accident and Miscellaneous Provision) Act [Cap 310 R.E 2019] and the Law Reform (Fatal Accident and Miscellaneous Provision) (Judicial Review Procedure and Fees) Rules, 2014, G.N. 324 of 2014 (the Judicial Review Rules). It is supported by the affidavit and statement setting forth facts and evidence of the matter. Briefly the applicant was employed by the second respondent since 2009 at the position of accountant officer II. He worked at that position until 2019 when he was promoted to accountant officer I. In 2020 the applicant was accused for misuse of public fund to the tune of Tshs 9,030,400/= and suspended from work pending investigation. After investigation was charged, hearing held and finally specifically on 21/8/2020 terminated from employment. His appeal to the Public Service Commission and the President bore no fruit. Hence determined to challenging his dismissal from employment through judicial review remedy. He applied and was granted leave to file orders of certiorari and mandamus vide Misc. Civil Cause No. 26555 of 2023 through the

ruling dated 9th April 2024. Hence this matter. When the respondents were served with the application document, filed joint counter affidavit and accompanied it with notice of preliminary objection;

1. That the application is incompetent and bad in law for being time barred.
2. That the Application is incompetent in law for being supported by the Affidavit which is contrary to Rule 8(1)(a) of the Law Reform 2 (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 Government Notice 324 of 2014. As the practice of this court that, once a preliminary objection is raised, the court would shelve the hearing of the substantive matter to allow the disposal of the preliminary objection first. I allowed the preliminary objection to be heard first, before the hearing of the application. On the date scheduled for hearing objection the applicant was represented by Mr. Loth Joseph Mwampagama, learned counsel whereas the respondents were represented by Mr. Michael Fyumagwa, learned State Attorney from the Office of Solicitor General. Parties prayed and were granted leave to file written submission. Mr. Mwampagama did not file reply submission, thus defaulted to appear to oppose the preliminary objections. Arguing the first objection that the application is time barred, the state attorney has submitted that the application was filed electronically through electronic Case Management System(e-CMS) on 20th May 2024, however, the hardcopy is indorsed and stamped to have been received on 25th April 2024. That the difference is contrary to electronic filing regime which requires documents to be submitted electronically. Counsel argues, the applicant must first complete the electronic filing 3 process, upon successful electronic filing, a control number for payment of filing fees is issued, after which the hard copies may be submitted. Has submitted that the date of filing the hardcopy cannot precede the date of electronic filing, as this contravenes the court's current filing procedures under rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 G.N. 148 of 2018, (the Electronic Filing Rules) that a document shall be deemed to have been duly filed if it is submitted through the electronic filing system prior to midnight, East African Time, on the date of its submission. Counsel went on to state under rule 8(1)(b) of the Judicial Review Rules the time frame for lodging an application for judicial review is fourteen (14) days from the date when leave is granted. It has been submitted that from 9th April 2024 when leave was granted judicial review was to be filed before or on 23rd April 2024 but it was filed on 20th May 2024. Counsel has prayed to dismiss the matter with costs under the provisions of Section 3(1) of the Law of Limitation Act, Cap. 89. In resolving the first objection as rightly put by the state attorney, the Judiciary of Tanzania has transformed from the conventional way of filing documents in court that is by presenting papers constituting pleading with the view of filing which was proved by signing the document by court officers and putting a court stamp. The conventional 4 means is now outlived, filing of cases is now replaced by electronic filing system that is electronic Case Management System (e-CMS). The requirement is embodied under the Judicature and Application of Laws (Electronic Filing) Rules, 2018 which came into force of 13/04/2018 through Government Notice No. 148 of 2018 (the Electronic Filing Rules). Rule 8 provides; 'All pleadings, petitions, applications, appeals and such other

documents are mandatorily required to be filed electronically and in accordance with the requirements of these rules.’ The state attorney has submitted that under rule 8(1)(b) of Judicial Review Rules, the application was to be filed within fourteen days from 9th April 2024 when leave was granted but it was filed electronically on 20th May 2023. I agree with the state attorney on that aspect though differ with him on when the application was filed. Electronic filing system passes in three stages, that is submission of document, admission and filing stage. Submission of document is done by the user ID and under rule 21 of the Electronic Filing Rules, a document is deemed filed when submitted through the electronic filing system. It provides; ‘(1) A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, 5 East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected.

- (2) A document submitted at or after midnight or on a Saturday, Sunday, or public holiday shall, unless it is rejected by the court, be considered filed the next working day.’ The second stage is done administratively by judicial personnel given the role of scrutinizing and admitting documents through the electronic filing system. And the last is filing, this is after the court fee has been paid, if the matter is not fee exempted. Having gone through the Digital Civil File Details, shows the matter was submitted through electronic filing system on 9th May 2024, it was admitted on 13th May 2024 and filed on 20th May 2024. As submitted by the state attorney leave was granted on 9th April 2024 thus judicial review in terms of rule 8(1)(b) of the Judicial Review Rules was to be filed within fourteen days, that is before or on 23rd April 2024. Indeed, the hardcopy in court file is indorsed received on 25th April 2024, but under rule 9 of the Electronic Filing Rules, case documents filed electronically forms the court record and maintain primacy. It provides; ‘The official record of the court shall be the electronic case file (ECF), proceedings pertaining to that case, together with any documents and exhibits filed under the conventional method.’ 6 Documents filed conventionally saves only as exception to the requirement to file documents electronically. Faced with akin situation in *Airtel Tanzania Plc vs Teddy Chamshama*, Civil Application No. 191 of 2025 [2025] TZCA 157 (27 February 2025; TanzLII) Hon. Nangela, J.A. stated; ‘... the use of the conventional mode of filing is no longer a norm but an exception, meaning that, where possible, all documents should be filed electronically.’ As no exception has been shown and the digital case file is showing the application was submitted on 9th May 2024 while leave to file judicial review was granted on 9th April 2024 far beyond fourteen days, it is time barred. From the above the first objection is sustained, the application for judicial remedy is timed barred. Having found that the application is time barred, I have no jurisdiction to deal with second objection on defective affidavit. See *Registered Trustees of Baraza Kuu la Waislamu Tanzania (BAKWATA) vs Bodi ya Wadahamini Jumuiya ya Waislamu Kumwelulo & Other*, Civil Appeal No. 629 of 2022 [2024] TZCA 288 (2 May 2024; TanzLII). The state attorney prayed the matter be dismissed under section 3(1) of the Law of Limitation Act. This issue has tasked my mind if Law 7 of Limitation is applicable to judicial review cases. Be that it may its time to dig into detail on that aspect is yet to come. It is settled law that an incompetent matter cannot be dismissed, as the court is deemed to have no jurisdiction over it. Faced

with akin scenario in the case of Bank of Tanzania vs Zuhura H. Mbulu, Civil Appeal No. 207 of 2021 [2024] TZCA 545 (11 July 2024; TanzLII) the court suo motu raised the issue as to whether it was proper for the High Court to dismiss the appellant's application for revision on account that it was time barred. Then it held; 'It is settled principle that an incompetent matter cannot be dismissed. The logic behind is that if the matter is incompetent, then the court lacks jurisdiction to entertain it on merit; instead, that matter is struck out to give an interested party an option to revert back properly to the same court to pursue the matter in question.' The court has in various cases distinguished the order to strike and dismiss the matter, striking out the matter does not resolve dispute between the parties; unlike when the matter is dismissed, it presupposes that the same has been determined on merit and the aggrieved party has no room to go back to the same court that dismissed it. At hand, the matter has not been heard on merits, it cannot be dismissed as prayed by the state attorney. 8 In the premises, application for judicial review is time barred. It is therefore struck out without costs. V.M. NONGWA JUDGE 3/4/2025 Dated and Delivered at Mbeya this 3rd April 2025 in presence of Ms. Edina Mwamlima and Mr. Edwin Chang'a learned State Attorneys and Mr. Loth Mwampagama learned counsel for the Applicant. V.M. NONGWA JUDGE 9

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Prepared on 12 October 2026 · Esheria