

TANZANIA / JUDGMENT

JUMA CHACHA Ruling 11 April 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (SHINYANGA SUB-REGISTRY)
AT SHINYANGA MISC. CIVIL APPLICATION NO. 202501021000000068 IN THE MATTER OF
APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI AND MANDAMUS AND IN
THE MATTER OF THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA IN MAKING A
DECISION IN AN APPEAL AGAINST THE DECISION OF THE PUBLIC SERVICE COMMISSION
UNDER SECTION 5(1)(d) OF THE PUBLIC SERVICE ACT (CAP. 298 R.E.2019) AND REGULATION
60(5) OF THE PUBLIC SERVICE REGULATIONS, 2003 AND IN THE MATTER OF THE DECISION OF
THE PUBLIC SERVICE COMMISSION IN EXERCISING ITS APPELLATE POWER OF APPEAL
AGAINST THE DECISION OF ACTING CHIEF EXECUTIVE OFFICER OF WEIGHTS AND
MEASURES AGENCY UNDER SECTION 25(1) (b) OF THE PUBLIC SERVICE ACT (CAP. 298
R.E.2019) AND REGULATION 60(2) OF THE PUBLIC SERVICE REGULATIONS, 2003 AND IN THE
MATTER OF THE REGIONAL MANAGER WEIGHTS AND MEASURES AGENCY RUKWA IN HIS
DISCIPLINARY AUTHORITY AND IN THE MATTER OF WEIGHTS AND MEASURES AGENCY
BEING THE EMPLOYER UNDER THE PUBLIC SERVICE ACT, 2019 (CAP. 298 R.E. 2002) AND
PUBLIC SERVICE REGULATIONS, 2003 (G.N. NO. 168 OF 2003) BETWEEN JUMA
CHACHA.....APPLICANT AND THE ATTORNEY
GENERAL..... 1 ST RESPONDENT THE CHIEF
SECRETARY.....2ND RESPONDENT THE PERMANENT SECRETARY,
PRESIDENT'S OFFICER, REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT.....
3RD RESPONDENT PUBLIC SERVICE COMMISSION..... 4th RESPONDENT
CHIEF EXECUTIVE OFFICE OF WEIGHTS AND MEASURES AGENCY.....
5THRESPONDENT 1

RULING

Date of Last Order 12.03.2025 Date of Ruling: 11.04.2025 MWAKAHESYA, J.: The applicant, Juma Chacha, is moving this court to grant leave for him to apply for orders of: Certiorari, in order to quash and set aside the decision of the 5th respondent of dismissing him from his employment; Mandamus, in order to direct and compel the 5th respondent to reinstate him and remunerate him accordingly from the date of dismissal to the date of judgment and to compel all the respondents to treat him fairly in his quest of challenging the legality and propriety of the disciplinary measures taken against him. The application, made under section 2(1) of the Judicature and Application of Laws Act; Section 17(2), 19(2) and (3) of the Law Reform (Fatal

Accidents and Miscellaneous Provisions) Act; Rules 4, 5(1), (2) (a) — (d) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 (the Rules), Order XXXVII rule 1(a), (2)(1) and section 95 of the Civil Procedure Code; rule 55(1), 56(1), 24(1), 24(2)(a), (b), (c), (d), (e) and (f) and 24(3)(a), (b),

(c) and (d) of the Labour Court Rules, has been brought by way of chamber summons and is supported by a statement and an affidavit sworn by the applicant himself. The respondents, challenging the 2 application filed a counter affidavit sworn by one Oscar Anthony Ng'itu, a principal officer of the 5th respondent. A brief background of the events leading to the present application is warranted. The applicant was an employee of the fifth respondent in the position of "Officer II" and was initially stationed at Shinyanga Region and later transferred to Rukwa Region. In the course of his duties he was charged with a disciplinary offence which culminated in his dismissal from the public service. Aggrieved, the applicant challenged the dismissal through an appeal before the Public Service Commission. His appeal, being out of time, was dismissed. Undeterred, the applicant appealed, in vain, to the President. It is against that backdrop that the applicant has preferred this application. However, before the application could be heard on merit, the respondents raised a preliminary objection on five points of law, viz.:

1. That, the application is hopelessly time barred for being filed after the expiration of 6 months from the final decision by the President of the United Republic of Tanzania dated on 1st October, 2019 contrary to rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial review Procedure and Fees) Rules, G.N. NO. 324 OF 2024; 3
2. That, the Application is incompetent for want of reports of inquiry committee and the records of disciplinary proceedings contrary to regulation 48 (7) of the Public Service Regulations, 2022;
3. The application is incompetent for being supported by an incurably defective affidavit containing false of untrue statement;
4. The application is defective for being supported by a defective affidavit as the jurat of attestation does not disclose the source of information contrary to section 10 of the Oaths and Statutory Declarations Act; and
5. The application is incompetent for suing a non existing entity who is the Chief Executive Office of Weights and Measures Agency contrary to Establishment Order 1 and 2 of the Executive Agencies (the Weights and Measures Agency) (Establishment) Order, 2002. It was, thus, imperative that the points of objection be disposed of. At the hearing of the preliminary objection, the applicant appeared in person, unrepresented. Meanwhile, the respondents enjoyed the services of Mr. Mussa Idd Mpogole, learned Senior State Attorney. The learned Senior State Attorney went on to submit that, the time limit, for an application like the present one, provided under rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) 4 (Judicial Review Procedure and Fees) Rules, 2014 is within six months of the proceedings, act or omission which are sought to be reviewed. In the

applicant's case, according to paragraph 13 of his affidavit, the decision of the President was meted out on 01.10.2019 through a letter addressed to him. Furthermore, there is also a letter dated 19.05.2021 written by the applicant and addressed to the President where the former is appealing for the latter to review the decision of dismissing his appeal and confirming his dismissal from the public service. The learned Senior State Attorney went on to submit that, if we were to conveniently take 19.05.2021 to be the date when it came to the knowledge of the applicant that his initial appeal to the president had been dismissed, in terms of rule 6 the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) rules, 2014 the six months within which the applicant was supposed to file his application for leave lapsed on 19.11.2021. Mr. Mpogole elaborated that, the application at hand was filed online in the Court's Electronic Case Management System "eCMS" on 26.12.2024 which was more than 40 months from the date the decision. He concluded that, on that basis, this application is hopelessly time barred and in terms of section 46 of the Law of Limitation Act then the only remedy is for the same to be dismissed. Moving on to the second point of objection, the learned Senior State Attorney submitted that, in order for this court to grant leave, there are three things to be taken into consideration. The same are: One, the applicant must have interest; Two, the application must have been filed on time, and Three, the applicant must have established a *prima facie*/arguable case. These conditions were laid out in the Court of Appeal decision of Hamis Babu Bally v. The Judicial Officers Ethics Committee and 3 Others, Civil Appeal No. 448 of 2021 (unreported). Assailing the application, the learned State Attorney referred to paragraph 9 of the applicant's affidavit where the latter deposed that he was neither given a copy of the inquiry committee report nor informed of his rights after the inquiry committee completed its task. Again, at paragraph 15 of the same affidavit the applicant complained of not being supplied with an inquiry report and that he was terminated before he was even charged. On this aspect, Mr. Mpogole concluded that, the applicant was supposed to request for the said inquiry reports as provided under regulation 48(7) of the Public Service Regulations, 2022 and since the applicant has failed to produce them before the court, as a consequence this court will not be able to establish a *prima facie* case. Being satisfied that the first two points of objection were sufficient to dispose of the application, Mr. Mpogole abandoned the remaining points and beseeched the court to dismiss the application with costs. The applicant, vividly flabbergasted, conceded to both preliminary objections and deeming it superfluous Mr. Mpogole did not make a rejoinder. Having gone through the respective submissions of the parties, it is now left for this court to determine the merit or otherwise of the preliminary objection on points of law, a task made rather straightforward by the applicant's candid concession. It is trite law that an application for leave to apply for judicial review must be made within six months of the proceedings, act or omission to which the application for leave relates. Rule 6 of the Rules provides 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." 7 The above cited provision is couched in mandatory terms and does not leave room for any deviation. With regards to the applicant's application, the decision made by the

President was communicated to the applicant via a letter dated 01.10.2019. As to when it came to the knowledge of the applicant the same cannot be discerned. However, crucially, as rightly submitted by the learned Senior State Attorney, Mr. Mussa Mpogole, through a letter dated 19.05.2021 the applicant was requesting the President to revisit his (the applicant's) earlier futile appeal, meaning that by that date the applicant had known the fate of his appeal from the Public Service Commission to the President. Thus, again as correctly submitted by Mr. Mpogole, we can conveniently take 19.05.2021 to be the date when the decision against which judicial review is sought was given. In line with rule 6 of the Rules, the period of six months started to count from 19.05.2021 and ended on or about 18.11.2021. The present application having been filed on 26.12.2024 it was more than 38 months out of time. As to the fate of the application, section 46 of the Law of Limitation Act provides that: "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 8 shall apply as if such period of limitation had been prescribed by this Act." [Emphasis mine]. Meanwhile, section 3 of the same Act provides that a proceeding instituted after lapse of the period of limitation shall be dismissed. Since the applicant has been caught in the web of the law of limitation, which has been held to know no sympathy or equity (see the Court of Appeal case of Barclays Bank Tanzania Limited v. Phylisiah Hussein Mcheni, Civil Appeal 19 of 2016 (unreported) this application is bound to be dismissed. Having found so, the first point of objection is enough to dispose of the application and dealing with the remaining point of objection morphs into an academic exercise. I, therefore, sustain the preliminary objection raised by the respondents and dismiss the application for being time barred. Since the same emanates from a labor matter, I exercise my judicial discretion and make no order for costs. It is so ordered. N.L. MWAKAHESYA JUDGE 11/04/2025 9

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