

TANZANIA / JUDGMENT

lilian elieth ngedu vs national institute of transport another

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19 January 2022

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IN THE HIGH COURT OF TANZANIA (MAIN REGISTRY) AT DAR ES SALAAM MISC. CIVIL
APPLICATION NO. 14 OF 2021 LILIAN ELIETH NGEDU.....APPLICANT
VERSUS THE NATIONAL INSTITUTE OF TRANSPORT..... 1st RESPONDENT THE ATTORNEY
GENERAL..... 2nd RESPONDENT

RULING

2 Dec 2021 & 19 Jan 2022 MGETTA, J: This ruling is in respect of an application lodged by way of Chamber Summons supported by an affidavit and supplementary affidavit sworn by Lilian Elieth Ngeda, the applicant, praying for extension of time to enable her file an application for leave to apply for judicial review. The application is made under section 14(1) of the Law of Limitation Act, Cap. 89 (henceforth Cap. 89) and is brought against two respondents namely The National Institute of Transport as 1st respondent and the Attorney General as 2nd respondent. During the hearing one Francis Walter, the learned advocate appeared for the applicant; while, the respondents enjoyed a legal service from Ms. Rehema Mtulya, the learned State Attorney. In his submission, Mr. Francis adopted the contents of the affidavit and supplementary affidavit. Right from the beginning he admitted in order for court to grant an extension of time, the applicant must show sufficient cause. He submitted that the applicant has accounted for each day of delay. He said the applicant intends to challenge in a judicial review the letter of discontinuation made on 14/12/2020 by the 1st respondent. Immediately she received it on 28/12/2020, through her advocate she issued a demand note on 4/1/2021. Her demand was refused by 1st respondent through its letter dated 7/1/2021. On 17/3/2021 the applicant issued a 90 day notice of intention to sue. The 90 day notice expired on 15/6/2021. He submitted that the six months within which to apply for leave expired on 27/6/2021. She delayed because she was waiting for 90 day notice to mature. That amounted to technical delay. To support his argument, he cited to me the case of Ryoba Msogore @ Marwa versus the Republic; Misc. Criminal Application No. 17 of 2020 (HC) (Musoma) unreported) where it was held that technical delay is excusable and explicable. Mr. Francis further stated that from 6/7/2021 up to 6/9/2021 the applicant spent time looking for a legal representation at Women's Legal Aid Centre on 26/8/2021 Women's Legal Aid Centre issued a

letter for legal representation and finally filed this application on 6/10/2021. The applicant had no money to enable her pay a hired advocate. On this ground, he asked this court to excuse her. He argued financial constraint was recognised in the case of Juma Omary Mshamu versus Airport Tax Co-operative Society Ltd (ATACOS) and Two Others; Misc. Civil Application No. 185 of 2020 (HC) (DSM) (unreported) where it was stated that the applicant should not be blamed as she had no money. He submitted that technical delay and financial constraint are sufficient grounds to show that she has accounted for the delay. He also submitted that her delay was not excessive or unreasonable. He stated that there is a serious point of law that should be presented before this court for determination. There is irregularity in the 1st respondent's decision. He supported his argument by referring me to the case of Hamis Babu Bally versus The Judicial Officers Ethics Committee and Three Others; Civil Application No. 130/01 of 2020 (DSM) (CA) (unreported) at page 18 which should be read together with paragraph 9 of supplementary affidavit of the applicant. He stated that if extension of time is granted the respondents will not suffer anything. To support his argument, he referred me to the case of Benedict Shayo versus Corporation as Official receivers of Tanzania Film Company Limited; Civil Application No. 366/01 of 2017 (CA) (DSM) (unreported) at page 5 paragraph 2 and the case of Mobran Gold Corporation versus Minister for Energy and Minerals & Two Others [1998] TLR 425. In reply, Ms Rehema adopted the contents of the counter affidavit and added that the applicant has failed to advance sufficient cause. She has not accounted for each day of delay. She admitted that it is not in dispute that the application for extension of time was filed on 6/10/2021. The applicant is late for ten (10) months from the date of 1st respondent's decision which was made on 14/12/2020. The section 14 of Cap. 89 provides that to grant extension of time a court of law must be satisfied that the applicant had shown good cause. To support her argument, she referred me to the case of Lyamuya Construction Company Ltd Versus Board of Registered Trustee of Young Women Christian Association of Tanzania; Civil Application No. 2 of 2010 (CA) (Arusha) (unreported) at page 6. She asserted that the applicant was negligent and did not show due diligence to file the application for leave within the period of six months after the date of discontinuation as provided under rule 6 of 2014 Rules. Moreover, in law she was not supposed to issue 90 day notice of intention to sue in application relating to judicial review. She asserted that from 14/12/2020 when discontinuation letter was issued by the 1st respondent up to 17/3/2021 when the applicant issued a demand letter to the 1st respondent three months had already passed. Counting from 17/3/2021 when the applicant 90 day notice of intention to sue to the 1st respondent it took almost three months to expire. It expired on 17/6/2021. She went on asserting that from 6/7/2021 up to 16/9/2021, the applicant relaxed on the pretence that she was looking for legal aid. Those days were not accounted for. Even the days from 16/9/2021 until she lodged this application were not accounted for. She admitted that to grant an extension is a discretion of the court, but that discretion should be exercised upon advancing sufficient reasons to warrant the court to do so. It is not sufficient reason that she lacked money to engage advocate. Even the reason that there is irregularity in the 1st respondent decision is also not sufficient reason. She said there is no serious issue of law to be determined by this court. She therefore prayed the application be dismissed with costs. Having heard submissions from the two counsel I find my only task to tackle is whether the applicant has advanced sufficient cause as provided under section 14 of Cap. 89 to enable this court to grant her

extension of time within which to file an application for leave to apply for judicial review. Rule 6 of the Law Reform (Fatal Accidents) (Judicial Review Procedure and Fees) Rules, 2014 (henceforth 2014 Rules) provides and I quote that: 5 "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 not in dispute that the applicant had intention to apply for judicial review of the 1st respondent's act of discontinuing her from the studies. The six month period as provided in the above quoted law started to run on 14/12/2020, the date the decision was made by the 1st respondent. As for what I can consider ignorance of law, instead of applying for leave on 17/3/2020 she issued 90 day notice of intention to sue. There is no law providing for that requirement in cases relating to judicial review. The delay started to accrue or to be counted from 14/6/2021 when the six month period as provided by law expired. As to lack of money to pay an advocate to represent her, to me that is also not sufficient reason. How can one prove that so and so has money or not. Obviously, it is the one who alleges. She failed to prove that allegation that she had no money for hiring an advocate. In connection to that, from 6/7/2021 up to 6/9/2021, she spent that period searching for a lawyer and ultimately she obtained Women Legal Aid Centre does not be a reason entitling her be late to lodge an application for leave. Not only 6 that but also she did not account for days from 7/9/2021 up to 6/10/2021 when she filed this application. While admitting that the applicant was late to apply for leave, her advocate Mr. Francis admitted that such a delay was neither excessive nor unreasonable. On this I should say that there is no reasonable or unreasonable delay. A delay even a single day delay is a delay. This was insisted in the case of Bushiri Hassan versus Latifa Lukio Mashayo, Civil Application No. 3 of 2007, where the Court stated that: "Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken " According to the above cited case the applicant was supposed to account for everyday of her delay. Indeed, what I can conclude is that she and or her lawyer was negligent that made her failure not only to file an application for leave within the prescribed period of six months but also to give sufficient reasons for delay or failure to account for days that she delayed. For the above reasons, I find that the applicant has failed to advance sufficient reasons for the delay to warrant this court to use its discretionary power to extend time. Consequently, the application is hereby dismissed. I order each party to bear its own cost. It is so ordered. Dated at Dar es Salaam this 19th day of January, 2022. u J. S. MGETTA JUDGE COURT: This ruling is delivered today this 19th January, 2022 in the presence of Mr. Francis Walter, the learned advocate for the applicant and in the presence of Mr. Hans Mwasakyeni, legal officer from 1st respondent and who is holding a brief for Ms. Rehema Mtulya, the learned state attorney, for respondents. 8

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