

TANZANIA / JUDGMENT

otilia nyamwiza rutashobya vs chief secretary others 2022 tzhc 9751 27 april 2022

COURT
TZHCDECIDED
27 April 2022

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IN THE HIGH COURT OF TANZANIA (MAIN REGISTRY) AT PAR ES SALAAM MISC. CIVIL
APPLICATION NO. 4 OF 2022 OTILIA NYAMWI2A RUTASHOBYA..... APPLICANT
VERSUS CHIEF SECRETARY..... ..1st RESPONDENT PUBLIC SERVICE
COMMISSION..... 2nd RESPONDENT PERMANENT SECRETARY, PRESIDENT'S OFFICE,
PUBLIC SERVICE MANAGEMENT AND GOOD GOVERNANCE.....3rd RESPONDENT NATIONAL
INSTITUTE OF TRANSPORT..... 4th RESPONDENT NATIONAL ART
COUNCIL.....5th RESPONDENT THE ATTORNEY
GENERAL.....6th RESPONDENT

RULING

6 & 27 April, 2022 MGETTA, J: The applicant, Otilia d/o Nyamwiza Rutashobya filed this application under section 14(1) the Law of Limitation Act, CAP 89, Section 95 of the Civil Procedure Code CAP 33 and section 19 (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, CAP 310, seeking, amongst others, an order for extension of time to enable her file an application for Leave to apply for Judicial Review. The application is supported by her affidavit which, among others provides for a narration of sequence of events pertaining to her employment and Page 1 of 7 salary increment upon being seconded by National Institute of Transport (the 4th respondent). Briefly the facts of this application can be decerned from the affidavit that the applicant is a public servant who was seconded to the 4th respondent as a legal officer 1 with effective from 01/5/2016. Her employment tenure started with the salary of Tzs 1,545,000/= as a Legal Officer grade 1, however she never received such amount. She has tried to recover her grade as well as salary arrears to the tune of Tzs 19,635,000/= from the 4th Respondent through administrative remedies, but in vain. She thought pursuing her legal remedies through judicial review. However, she found herself out of time; hence, this application. At the time of hearing of this application, the applicant fended herself; while, the respondents were represented by Mr. Charles Mtae, the learned State Attorney. In her submission, the applicant adopted her affidavit as part of her submission in support of the application. Her submission is built on the ground that since the dispute arose on 2018 between

her and the 4th Respondent, it has lasted for more than six months, hence this application for extension of time. She has been busy communicating Page 2 of 7 with the 1st 2nd, and 3rd respondents till 5/7/2021 when the final decision was made. That she was aggrieved with the decision of the Chief Secretary, then she referred the matter to the Commission for Mediation and Arbitration (CMA) which ruled that it had no jurisdiction to deal with her complains and consequently she was advised to follow the laid down procedure for judicial review. According to her, she felt that she has accounted for delayed days, and added that she has been serious in making follow up. She urged this court to grant this application as there is an issue of illegality. She added that she is aggrieved with the decision of the Chief Secretary which was made on 5/7/2021. In response, from the outset, Mr. Charles Mtae adopted the counter affidavit of Mr. Fabian Igogwe Kisuka, the Principal State Attorney of the 4th Respondent as part of his submission. He strenuously resisted the application. He submitted that the applicant has mentioned illegality, but has not elaborated what kind of illegality. He added she ought to explain the type of illegality and not only mentioning them, and that in public service there are procedures to follow to channel complains. There must be a decision for the applicant to exercise her Page 3 of 7 right of judicial review. He concluded that the Applicant has failed to advance sufficient reasons to warrant for extension of time. It is a trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where the applicant shows sufficiently reasons as required under section 14(1) of the Law of Limitation Act CAP

89. I have gone through the affidavit of the Applicant, apart from illegalities expressed in paragraph 7, I haven't seen the Applicant accounting for the delayed days. For instance, the Applicant has not accounted for the days she delayed to take action against the decision of the 3rd Respondent made on 11/11/2019 instructing the Applicant to return to BASATA and denied the Salary arrears of Tzs 19,635,000 to the date when the applicant reacted to such letter on 28/4/2021 by making reference to the Chief Secretary. However, it is evident from the records that since 2018 the Applicant has been trying to exhaust the remedies available in Public Service Act, CAP 298, but in vain. In the case of Jumanne Hassan Bilingi Versus The Republic; Civil Application No. 23 of 2013 (CA) (unreported) cited with approval by the Court of Appeal in the case of Page 4 of 7 Henry Leonard Maeda & Another Versus John Anaef Mongi & Another; Civil Application 31 of 2013, (CA), it was stated that: "In essence, what amounts to good cause is upon the discretion of the Court and it differs from case to case. But basically, various judicial pronouncements defined good cause to mean reasonable cause which prevented the Applicant from pursuing his action within the prescribed time." A glance at the applicant's affidavit, the applicant has shown the time taken for her to exhaust local remedies under the Public Service Act (supra). She spent most of her time pursuing local remedies available in the said Act. She has also complained about the illegality of actions of the respondents, that their actions towards her employment are of vital concern. I went through the records to satisfy myself whether there is illegalities on the face of the record. To my view, I found illegalities which need to be addressed by the court. Therefore, I find myself convinced to exercise my discretion of extending time within which

the she can approach this court and elaborate her complains in the required manner and if satisfied make necessary orders to fix the situation. Page 5 of 7 I am also moved with the case of Lyamuya Constraction Co. Ltd Versus Borad of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, (CA)(Arusha) at page, at page 6 the Court of Appeal stated that: "as a matter o f general principle, it is a discretion o f the Court to grant extension o f time. But that discretion is judicial, and so must be exercised according to the rules o f reason and justice and not private opinion or arbitrary" Subscribing to the above holding and referring to the reasons advanced by the Applicant of illegality as stated above, depriving her of extension of time in this matter to my view would amount to arbitrariness. I hereby grant extension of time of 14 days from today within which she would file the necessary application, if she so wishes. Each party has to bear its own costs. It is so ordered. Dated at Dar es Salaam this 27th 1 r * ", 2022. ii 3.S. MGETTA JUDGE COURT: This ruling is delivered today this 27th day of April, 2022 in the presence of Mr. Charles Mtae, the learned state attorney Page 6 of 7 assisted by Mr. Hans Mwasakyeni, legal officer for the respondents, but in the absence of the applicant who is reported to have a sick child. J.S.MGETTA JUDGE 27/ 4/2022 Page 7 of 7

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