

TANZANIA / JUDGMENT

Paschal Shitunga Ruling

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA MISC. CIVIL CAUSE NO. 29130 OF 2024 PASCHAL STEPHENE
SHITUNGA..... APPLICANT VERSUS THE DIRECTOR GENERAL OF
PREVENTION AND COMBATING OF CORRUPTION BUREAU (PCCB)..... 1ST RESPONDENT
THE PERMANENT SECRETARY PRESIDENT'S OFFICE, PUBLIC SERVICE
MANAGEMENT.....2ND RESPONDENT THE ATTORNEY
GENERAL.....3RD RESPONDENT

RULING

14th & 21st March 2025 CHUMA, J. The applicant in this application is seeking leniency from this court to extend the time within which to apply for leave to apply for judicial review against the decision of the 1st respondent who terminated his employment effective from 22/6/2015. The application is supported by an affidavit of the applicant whereas it is contested by a joint counter affidavit sworn by Ayoub Hamis Akida. Aided by available records, I will albeit in short narrate the background of this matter. The applicant was employed by the 1st respondent as an Assistant Investigator effective from 1/9/2006 stationed at Bukoba – Kagera region. In 2009 he was transferred to Mwanza. On 12/5/2015 he was served with a charge containing a total of 11 counts to wit; one count of abscondment, one count of insubordination, six counts of Moral Turpitude, and two counts of Dishonesty. Based on the said charge the employment of the applicant was terminated on 22/6/2015 by the 1st respondent. Being discontented, the applicant appealed to the Director General of the Prevention and Combating of Corruption Bureau (PCCB). The Director General on 2/9/2015 confirmed termination of the applicant's employment. It appears that after more than 8 years the applicant referred the second appeal to the Permanent Secretary of the Commissioner for Public Service vide a letter dated 6/2/2024. The Permanent Secretary on 30/4/2024 responded to the applicant's letter informing him that the decision of the Director General was final and in case he was still not satisfied he ought to apply for judicial review before this court. From that response, the applicant decided to file this application on 17/11/2024. By consent, the application was argued by way of written submission. The applicant filed his submissions without legal representation whereas the respondents' submissions were filed by Mr. Allen Mbuya State Attorney. 2 Mr. Shitunga submitted that the time within which to apply for judicial review is set by Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 which provides 6 months from the date of the

decision. A letter from the Director General confirming termination refers to charges which he was not previously charged. The reasons for his delay are contained in paragraphs 12, 13, 14, 15, 17 and 19 of the affidavit to the effect that he, him being a lay person was not properly directed where to refer his appeal hence he referred the appeal to the Permanent Secretary of the Commissioner for Public Service who replied on 30/4/2024; that, the letter of the Permanent secretary was addressed to the 1st respondent not him directly; that he was late supplied with necessary documents; and that proceedings which led to his termination has irregularities in the sense that the 1st respondent was a complainant, prosecutor, witness and judge of his case and the applicant was not given right to be heard. In reply, Mr. Mbuya submitted that, under Section 14(1) of the Law of Limitation Act, Cap 89 R.E 2019, the court may only grant an extension of time upon reasonable or sufficient cause. That, extension of time is granted at the discretion of the Court but this discretion must be exercised judiciously as was stated in the case of *Lyamuya Construction Company Limited V Board of Trustees of Young Women Christian Association of Tanzania*, Civil Application No. 2 of 2010 (unreported). The Applicant did not account for all periods of delay since the decision intended to be challenged by the Applicant was made by the 1st Respondent on 2nd September 2015 he was supposed to file the intended application before or on 2nd March 2016. This application was filed on 18th November 2024 which is more than 8 years from the date of the decision. The applicant alleges that he requested the documents through the letter dated 16th March 2021 and 11th August 2023 but he was served with the same on 5th September 2023. But he still failed to account days from 2nd March 2016 the date of decision to 16th March 2021 the date he requested for the documents for the first time which is more than 5 years. Further, the applicant has failed to account for days from 5th September 2023, the date he received the document to 17th November 2024, the date of filing this Application. The law requires even a single day of delay to be accounted, as stated in a number of decisions including the case of *Airtel Tanzania Limited V Mister Light Electrical Installation Co. 4 Limited and Arnord Mulashani*, Civil Application No. 37/01 of 2020 (unreported). He submitted further that, the delay of the applicant is considerably inordinate and he has been negligent in pursuing his rights. That, ignorance of the law is not sufficient reason for extension of time. In other words, henceforth ignorance of law is not a defence ‘*ignorantia juris non excusat*’ as stated in the case of *Farida F. Mbarak V Domina Kagaruki and 4 Others*, Civil Reference No. 14 of 2019, (unreported) at page 20 that; “The law was therefore not new and the applicants' contention that the law was not accessible or that there was confusion on what was the law, as rightly found by the learned single justice, was nothing but a plea of ignorance of law which has never been accepted as a sufficient reason or good cause for extension of time”. That, the existence of a point of law or illegality amounts to sufficient reason for the extension of time, however, such point of law must be apparent on the face of the record and not one that would be discovered by long-drawn argument or process as stated in the case of *Lyamuya* (Supra) at page 9. That, in this matter at hand, there is neither illegality nor irregularity in the decision sought to be challenged as all procedures were duly followed whereby the Applicant was served with a charge sheet (Annexures PCCB -3) which required him to give his defence within 14 days of which he failed to do so. Furthermore, the applicant was summoned before the Inquiry Committee but refused the summons hence he slept on his right to be heard. He also submitted that the 1st respondent was not a judge on his cause as

all procedures for fair hearing were done according to the law and the Applicant is the one who refused to defend himself. Mr. Mbuya prayed for the application to be dismissed with costs. Having considered the rival arguments of both parties. The issue that calls this court to determine is whether the applicant demonstrated sufficient reason to warrant this court grant or not an extension of time. The law is well settled that, a party seeking an order for an extension of time is duty bound to substantiate sufficient reason(s) which prevented him from acting within time as stated in the cases of Regional Manager Tanroads Kagera V Ruaha Concrete Company Ltd, Civil Application No. 96 of 2007 (unreported) and Lyamuya Construction Company Limited V Board of Trustees of Young Women Christian Association of Tanzania (supra). Another cardinal law is that the applicant needs to account for every day of delay. In other words, the applicant needs to demonstrate how days passed without his negligence. See the case of Omari R. Ibrahim V Ndege Commercial Services Ltd, Civil Application No. 83/01 Of 2020; Hassan Bushiri V Latifa Mashayo, Civil Application No. 3 of 2007; and Dar es Salaam City Council V Group Security Co. Ltd, Civil Application No. 234 of 2015 (all unreported). In the instant matter, it is evident that the final decision of the 1st respondent to terminate the applicant's employment was made by the Director General of the 1st respondent on 2/9/2015. As correctly submitted by the parties; the application for leave to file judicial review was supposed to be filed within six months on that is on 2/2/2016. Henceforth, this application having been filed on 17/11/2024 the applicant delayed for 9 years and 9 months. The applicant advanced a number of reasons, starting with ignorance of the proper procedure for appeal after the decision of the Director General of the 1st respondent, the applicant blamed the 1st respondent for not directing him proper forum/procedure for his appeal and failure to supply him with regulations and laws which provides for appeal procedures. The law is amply clear that, ignorance of the law or lack of diligence constitutes no good cause for extension of time. In the case of TCCIA Investment Company Limited V Dr. Gideon H. Kaunda, Civil Appeal No. 310 of 2019 (unreported) the Court of Appeal said; "We are increasingly of the view that, since the new filing system was established by Rule 21 (1) of the JALO Rules 2018, Mr. Pasha was expected to be aware of the same. Definitely, being unaware of the existence of that provisions of the law, depicted ignorance and lack of diligence on his part, which by any standard, could not have amounted to good cause. See for instance, the cases of Ngao Godwin Losero v. Julius Mwarabu, Civil Application No. 10 of 2011 and Wambura N. J. Waryuba v. The Principal Secretary, Ministry of Finance and Another, Civil Application No. 320/01 of 2020 (both unreported)." (emphasis added). In another case of Omary Ally Nyamalege (As the administrator of the estates of Selemani Ally Nyamalege) and 2 others V Mwnza Engineering, Civil Application No. 94/08 of 2017; the Court of Appeal on page 9 held that; 8 "It seems to me that by claiming that in the aftermath of Mr. Muna's death, the applicant could not navigate their way through the maze of legal procedure, they are necessarily citing ignorance of law as the cause of the delay involved. But it has been held many times without number that ignorance of the law has never been accepted as a sufficient or good cause for an extension of time..." (Emphasis added) Likewise, in the present matter, the applicant is presumed to know all laws prevailing on pursuing his rights. He therefore stopped relying on ignorance and blamed the 1st respondent for his inactions. Regarding the reason that he was late supplied with copies of necessary documents, it is undisputed that the applicant applied for the documents on 16th

March 2021 for the first time as proved by Post Receipt attached to the affidavit. It is also not in dispute that the applicant reminded the 1st respondent of his previous request to be supplied with the documents on 11/8/2023 as stated by the Director General in his letter dated 5/9/2023. Therefore, the applicant managed to account for days from 16/3/2021 when he first applied for documents up to 5/9/2023 when he was supplied with the copies. However, in the same connection, Mr. Mbuya was correct in his argument that the applicant relaxed from 2/9/2015 the date of a final 9 decision to 16/3/2021 when he requested the said documents for the first time. That is more than 5 years. I have further considered that, after being supplied with the said copies on 5/9/2023 the applicant relaxed to take the next step in pursuit of his right up to 6/2/2024 when he referred the matter to the Permanent Secretary of the Commissioner for Public Service vide a letter dated 6/2/2024. That was after 5 months. The permanent secretary promptly communicated his directives vide a letter dated 30/4/2024 which the applicant alleged was late supplied to him for it was channeled through the 1st respondent but reading the whole affidavit the applicant did not say when exactly the letter was supplied to him. Therefore, only days from 6/2/2024 to 30/4/2024 are excused under the principle of technical delay as stated in the case of Mathew T. Kitambala v Rabson Grayson and another, Criminal Appeal No. 330 of 2018; and Bharya Engineering & Contracting Co. Ltd v Hamoud Ahmed Nasor, Civil Application No. 342/01 of 2017 (both unreported). Surprisingly, the applicant has also failed to account for days from 30/4/2024 when the decision of the permanent secretary was rendered to 17/11/2024 when this matter was filed. That is 6 months and counting. 10 I have also taken into account the illegalities stated by the applicants. Starting with the argument that the applicant was not afforded the right to be heard, the respondent argued that he was not heard before termination. Having gone through the counter affidavit, the applicant was required to render his defence within 14 days but failed to do so and he also never appeared before the inquiry committee. Mindful that I am not enjoined to discuss the issue of illegality in detail as it will be the subject of prospective proceedings, I find this allegation unproved as it will only be determined by evidence and long-drawn arguments of parties. It is a settled law that the illegality complained must be on the face of the record. See the case of Lyamuya Construction Company Limited (supra), Ntiga Gwisu V Republic, Criminal Appeal No. 428 of 2015 as well as the case of Harrison Mandala and 9 others V the Registered Trustees of the Archdiocese of Dar es Salaam, Civil Application No. 482/17 Of 2017 (both unreported). The argument that the 1st respondent was a complainant, prosecutor, witness, and judge of his case will not detain me for long having considered that termination of the applicant's employment was decided by proper authority and appeal was confirmed by the Director General. 11 Lastly, regarding the argument that the Director General of the 1st respondent has referred another charge of participating in Political activities, I join hands with the applicant that in his letter dated 2/9/2015, the Director General added another charge influencing his affirmation of the decision to terminate the applicant which was not part and parcel of the 11 charges tabled against the applicant. He said; "Pamoja na mashtaka hayo, tunayo taarifa na ushahidi kwamba ulishiriki masuala ya siasa kinyume na matakwa ya kanuni F. 20(1) (a) ya Kanuni za Kudumu Toleo la mwaka 2009...kwakuwa ulishafukuzwa naithibitisha adhabu ya kufukuzwa kazi iliyotolewa na Mamlaka yako ya Nidhamu" (emphasis added) This was an apparent illegality that transpired on the decision of the appellate authority as the applicant was

never charged or heard on that offence. In the case of *Iron and Steel Limited v. Martin Kumalija and 117 Others*, Civil Application No. 292/18 of 2020 (unreported), the court of appeal had the following to say; "... Illegality of the impugned decision is not a panacea for all applications for extension of time. It is only one in situations where, if the extension sought is granted, that illegality will be addressed." 12 In my view, whether the inclusion of a new offence in an appeal constitutes illegality that goes to the root of the applicant's termination will be only addressed when the applicant is given a chance to apply for leave to file judicial review. It has been held in times without number that, illegality constitutes good cause for extension of time. Amongst the decisions include *Principal Secretary Ministry of Defence and National Service v. Devram P. Valambhia* [1992] TLR 387, and *Arunaben Chaggan Mistry v. Naushad Mohamed Hussein & 3 Others*, Civil Application No. 6 of 2016, (unreported). I further noted that, neither in counter affidavit nor in written submissions, the respondents have managed to counter this illegality. In paragraph 9 of the applicant's affidavit, the applicant stated that; "That in the letter of appeal dated 2nd September 2015 from the Director General of (PCCB) failed to rely on the alleged counts which were mentioned (sic) to the charge sheet that the applicant involving(sic) in political activities and in the general election of 2015" The joint counter affidavit of the respondents evasively denied what was deposed by the applicant. Paragraph 7 of the joint counter-affidavit reads; 13 "That, the contents of paragraph 9 of applicant affidavit are vehemently disputed, because the letter dated 2nd September 2015 issued by Director General of the 1st Respondent was basically a dismissal letter and not what is contested by the applicant herein." In the end, this ground of illegality has merit. I find it proper and just in the interest of justice to grant an extension of time to the applicant to apply for leave to apply for judicial review against the decision of the 1st respondent to terminate his employment. The applicant is then given 21 days from the date of this ruling to file his intended appeal. Considering the circumstances of this application I order no cost. It is so ordered. DATED at MWANZA this 21st day of March 2025. W. M. CHUMA JUDGE 14 Ruling delivered in court in attendance of the applicant in person and Mr. Felician Learned State Attorney for the respondents this 21st day of March, 2025. W. M. CHUMA JUDGE 15

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