

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 406/18 OF 2022

ELIAS AUGUSTINE APPLICANT

VERSUS

THE CHIEF SECRETARY 1ST RESPONDENT

THE PUBLIC SERVICE COMMISSION 2ND RESPONDENT

THE SHINYANGA MUNICIPAL COUNCIL 3RD RESPONDENT

THE HON. ATTORNEY GENERAL 4TH RESPONDENT

**(Application for extension of time from the Judgment and Decree of the
Labour Division of the High Court of Tanzania at Dar es Salaam)**

(Aboud, J.)

**dated the 16th day of April, 2021
in**

Labour Application No. 488 of 2019

RULING

12th & 19th June, 2023

KITUSI, J.A.:

This is an application for extension of time under rule 10 of the Court of Appeal Rules, 2009 (the Rules). It seeks extension of time to appeal the decision of the High Court, Labour Division (Labour Application No. 488 of 2019) dated 16th April 2021. The application is supported by an affidavit of Elias Augustine, the applicant, which attempts to account for the period from the date of that judgment to the date of filing this application.

The respondents resist the application through an affidavit in reply that has been taken by Kausa Izina, a State Attorney.

Before me, Mr. Habrahamu Jacob Shamumoyo, learned advocate, appeared representing the applicant, while the respondents were represented by Ms. Vivian Method, learned Senior State Attorney and Ms. Adelaide Masauwa, learned State Attorney. There are written submissions for and against the application.

At the outset, Mr. Shamumoyo referred me to the written submissions filed for the applicant, in which four areas are argued in support of the application. These are:-

- 1. The applicant has been vigilant in prosecuting the appeal*
- 2. The decisions of the Shinyanga Municipal Council, Public Service Commission, Chief Secretary and the High Court Labour Division are tainted with illegalities.*
- 3. The applicant was misdirected by pursuing application for leave to appeal.*
- 4. The respondents are government entities and will not be prejudiced or inconvenienced if extension of time is granted but the applicant will have irreparable loss.*

Mr. Shamumoyo was clear that he was going to argue only one point, that is illegality, in prosecuting the application for extension of time. Counsel stuck to his gun even when I drew his attention to the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association**

of Tanzania, Civil Application No. 2 of 2010 (unreported), which was cited to me by both parties, especially the following passage:-

"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated:-

- (a) The applicant must account for all the period of delay*
- (b) The delay should not be inordinate*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged".*

As I stated above, even after bringing these principles to his attention, Mr. Shamumoyo insisted that he would only argue ground (d) in the quoted paragraph, which is on illegality.

It would appear to be ironic that the applicant whose affidavit (paragraphs 3 through 7) gives an account for the delay, would later choose not to say a word in terms of reasons for that delay. The

allegations of illegality were raised in paragraphs 8 and 9 of the affidavit, to wit;

"8. That the decision of the High Court Labour Division is tainted with illegality by not faulting the decision of the Second Respondent (the Public Service Commission) of adding additional charges of allocating land without having authority without giving the applicant an opportunity to make representation or submit defense.

9. That the decision of the High Court Labour Division [erred] is tainted with illegality for not faulting the First and Second respondent decision of imposing the punishment of summary dismissal instead of confirming the punishment imposed by the third Respondent (the Shinyanga Municipal Council) of demoting the applicant from the rank of principal land officer grade I to land officer grade II without complying with the mandatory requirement of the law."

A brief background to this case becomes necessary as it will shed light on the context from which paragraphs 8 and 9 above arose. The applicant was employed as a Land Officer, and at the time when the alleged cause of action giving rise to these proceedings occurred, he was stationed in Shinyanga Municipal Council, the third respondent, as

a Principal Land Officer Grade I, and head of Land Town Planning Department.

Thereabout, the third respondent who was the applicant's disciplinary authority, charged and convicted him with disciplinary offences. It imposed on him a punishment of demotion from the level of Principal Land Officer Grade I to Land Officer Grade II. Dissatisfied, the applicant appealed to the Public Service Commission, the second respondent, which not only dismissed the appeal but enhanced and replaced the sentence of demotion with that of summary dismissal from public service. His further appeal to the Chief Secretary, the first respondent, was to no avail.

The applicant approached the High Court for prerogative orders raising seven issues for determination. I shall reproduce and make reference to the first and second issues only, which bear relevance to the point of illegality argued by the applicant. These are:-

"(i) Whether the applicant was denied a fair hearing substantively and procedurally by the Inquiry Committee and the respondents.

(ii) Whether the employment of the applicant was terminated by the respondents' incomplete breach of the principles of natural justice"

In his written and oral address on the point of alleged illegality, Mr. Shumamoyo argued that the Public Service Commission enhanced the punishment upon considering a new charge in respect of which the applicant was not given an opportunity to be heard.

Responding, Ms. Method had two points to argue that there was no illegality to warrant extension of time. The first point is that the applicant is faulting the decisions, not the manner in which they have been arrived at. Citing the Court's decision in **Charles Richard Kombe v. Kinondoni Municipal Council**, Civil Reference No. 13 of 2019 (unreported), she argued that the errors raised by the applicant do not constitute illegality.

Secondly, she submitted that as the alleged illegalities were committed by the second respondent and as the proceedings before that Commission are not part of the record, the Court cannot address it. She cited the case of **Modestus Daudi Kangalawe (Administrator of the estate of the late Daudi Temaungi Kangalawe v. Dominicus Utenge)**, Civil Application No. 139 of 2020 (unreported) for the requirement to include proceedings in the record of the application, if the Court is to address errors arising from those proceedings.

The applicant's counsel has cited the cases of **VIP Engineering and Marketing Limited and 2 Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 and; **TANESCO v Mafungo Leonard Majira and 15 Others**, Civil Application No. 94 of 2016 (both unreported) to support his contention that once illegality is alleged, the Court should take it as sufficient ground to extend time.

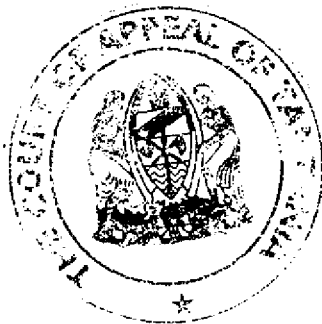
My reference to the judgment of the High Court vindicates the applicant in that he raised the issue of denial of the right to be heard and violation of rules of natural justice. Before me the applicant need not to prove such allegations but whether it constitutes sufficient ground to grant the application so that he may be heard. In **Charles Richard Kombe** (supra) it was held that denial of a right to be heard is one of the instances of illegality, others being lack of jurisdiction and limitation period. So, with respect, I do not agree with Ms. Method that the applicant's complaints do not attack the process of the decision. This is because denial of the right to be heard is the process or procedure that may affect the decision. Even without the proceedings being part of the record, there is enough material for me to be satisfied that the issue of denial of the right to be heard was raised at the High Court and it is a point of sufficient importance.


In the end, I grant the application and order the applicant to lodge the intended appeal within 60 days of the delivery of this ruling. This being an employment - related matter, I make no order as to costs.

DATED at DAR ES SALAAM this 16th day of June, 2023.

I. P. KITUSI
JUSTICE OF APPEAL

The Ruling delivered this 19th day of June, 2023 in the presence of Mr. Habrahamu Jacob Shamumoyo, learned Counsel for the Applicant and Ms. Careen Masonda, learned State Attorney for the 1st, 2nd, 3rd and 4th Respondents is hereby certified as a true copy of the original.




J. E. Fovo
DEPUTY REGISTRAR
COURT OF APPEAL