

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL CASE NO. 54 OF 1993

In the matter of an application by CLETUS WANGABO for leave to apply for orders of Certiorari and Mandamus

And

In the matter of the decision of the Principal Secretary Ministry of Home Affairs and Principal Secretary President's Office.

Between

Cletus Wangabo

And

The Principal Secretary Ministry of Home Affairs and  
The Principal Secretary President's Office.  
The Attorney General.

RULING

MAINA, J.

The applicant, Cletus Wangabo, was employed by the Ministry of Home Affairs as an Assistant Inspector in the Prisons Department. He was dismissed from his employment by the Principal Secretary of that Ministry by letter dated 17 April 1990. His appeal to the Police and Prisons Service Commission was dismissed on 4 May 1991. The applicant petitioned to the President's Office, but unsuccessfully. He filed the application for orders of certiorari and mandamus, in this court on 19 August, 1993.

At the commencement of the hearing of this application, Mr. Mwidunda, learned State Attorney, argued a preliminary point, that the application is time-barred, and it should be dismissed. In his submission, learned State Attorney said that the application to this court should have been filed within six months after the decision of the Principal Secretary, Ministry of Home Affairs and after the Police Force and Prison Service Commission's decision. Learned State Attorney further said that even after the decision of the Police Force and Prisons <sup>Service Commission</sup> was made and communicated to the applicant in May 1991, the applicant did not file the application to this court within six months. The application was filed on 19 August 1993.

In reply to the preliminary point raised, Mr. Kashumbugu, learned counsel for the applicant, said that this application could not be made until the decision was made by the Principal Secretary to the President's Office. That decision was made on 14 April 1993 and this application was filed on August 1993. So Mr. Kashumbugu said that the application was filed within the statutory period of six months, and so it was not time-barred.

The decision of the Police Force and Prisons Service Commission made in this matter was final. Section 7(3) of the Police Force and Prisons Service Commission Act, No. 8 of 1990 provides as follows:

"The final disciplinary authority in respect of officers of the rank of Assistant Inspector to the rank of Assistant Commissioner is vested in the Commission."

The applicant was an Assistant Inspector, and when the Commission dismissed his appeal and confirmed the decision by the Principal Secretary of dismissing him, that decision by the Commission was final. I entirely agree with Mr. Mwidunda that the applicant's complaint to the President's Office was done outside the provisions of the law, and incidentally, the President's office confirmed the decision by the Commission. The applicant was required, immediately after the Commission made its decision, to apply to this Court for prerogative orders, if he felt that he was not fairly treated. There is no provision anywhere in the Police Force and Prison Service Commission Act, for a person aggrieved by the decision of the Commission to appeal to the Principal Secretary, the President's Office. Section 18 (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act as amended by Act No. 55 of 1968 provides as follows:

"In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed leave shall not be granted unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed under any Act ....."

The order which the applicant is seeking leave to apply for the purpose of its being quashed, was made by the Commission which confirmed his dismissal from employment. The Commission made its

decision on 4 May 1992 and this application was filed on 19 August 1992 and this application was filed on 19 August 1993. Clearly, as Mr. Mwidunda submitted, this application was filed after the period of six months, and so it is time-barred. It is mandatory that the application be made within six months after the decision was made. If there was sufficient cause for the delay, the applicant would have applied for leave to file the application out of time, under section 4 of the Law of Limitation Act, 1973. No such application has been made for extension of time.

The application is time-barred, and it is dismissed with costs.

*W. J. Maina*

W. J. MAINA  
JUDGE

Dear Mr. Salama

26th October, 1994.

Mr. Masawe for Mr. Kashumba for the applicant  
Mr. Mwidunda, State Attorney, for the respondent.