

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM MAIN REGISTRY
MISCELLANEOUS CIVIL CAUSE NO. 45 of 2010

VICTORIA V. KOMBE.....1ST APPLICANT

CONRAD V. KOMBE.....2ND APPLICANT

NATHANAEL F. MWANDETE.....3RD APPLICANT

VS

THE ATTORNEY GENERAL.....RESPONDENT

THE MZUMBE UNIVERSITY.....RESPONDENT

Ruling

Date of last Order: 06-10-2010

Date of Ruling: 08-10-2010

JUMA, J.:

The applicants Victoria V. Komba, Conrad C. Millinga, Nathanael F. Mwandete and Julius B. Ngaruka have (Applicants) are making two prayers under one application. The two prayers are:

- (i) Extension time within which to apply for leave for judicial review; and
- (ii) Application for leave to apply for judicial review.

To move this court, the applicants have employed section 14-(1) of the **Law of Limitation Act Cap 89**; Section 2 (3) of the **Judicature and Application of Laws Act, Cap 358**; section 17-(1) and (2); section 18-(1) (2) and section 19-(3) of the **Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310**.

It emerges from their joint affidavit, that the applicants are graduate students of the Mzumbe University. They were undertaking a Master of Science (MSC.) degree course having joined that university during the university's first semester of the 2008/2009 academic year. Their problem had begun when they sat for their first semester examination in March 2009, and they failed in three subjects. Upon failing the three subjects the 35th Meeting of University Senate allowed them to take supplementary examinations in September 2009 subject to certain conditions. The applicants proceeded into the second semester at the end of which they sat for the second semester examinations. When the 36th Meeting of the University Senate announced the second semester examinations results in August 2009, the applicants found that they had failed in more than six credit points and they were recommended for discontinuation.

Aggrieved by the decision of the 36th Meeting of the Mzumbe University Senate, the applicants contend that they were discontinued without being given the chance to sit for supplementary examinations in September 2009 which the Senate had earlier recommended.

At the hearing of this chamber application, Mr. Senguji, the learned Principal State Attorney represented the 1st Respondent. Mr. Kashumbugu, the learned Advocate appeared for the Applicants. While Mr. Kobas; the learned Advocate represented the 2nd Respondent. Mr. Kobas opposed the applications. On his


part, Mr. Senguji, did not oppose both the applications for extension of time and application for leave to file for judicial review.

Having considered the submissions from the three learned Counsels I should perhaps begin with the request for the extension of time. The main issue for my determination is whether the applicants have assigned sufficient reasons to explain what delayed them from lodging their application for leave within the prescribed six-month period. The applicants have in their joint affidavit assigned the reason that they were within the prescribed period of limitation when they filed their earlier application for leave [i.e. Miscellaneous Civil Cause No. 71 of 2009]. This application was struck out on 27th April 2010 by my brother Mwaikugile, J. because that application was filed under wrong provisions of the law. The striking out of their earlier application for leave has pushed the applicants outside the six-month period prescribed by the law to apply for leave to file for judicial review. For the sake of doing justice to both the opposing parties, I am prepared to find and to hold that the applicants have furnished sufficient reasons to explain their delayed application for leave to apply for judicial review.

The next question for my determination is whether the applicants should be granted leave to apply for the main orders of certiorari and mandamus. Apart from being satisfied if the applicants herein have made out any arguable case to justify main application, this

court is also required at this stage of applying for leave, to consider whether the applicants have sufficient interest. I am of the view that the applicants have sufficient interest in the subject matter of complaint and they should be heard in their impending main application for judicial review. The applicants have in addition demonstrated that they have a prima facie arguable case. It is clear from the affidavits and supporting documents that the applicants' interest arises from the decision of the Senate of the University of Mzumbe to discontinue them from the study.

In the upshot the applicants' prayer for an extension of time to file for leave and their prayer for leave to apply for judicial review are granted. Applicants shall file their main application for the prerogative orders of certiorari and mandamus within 14 days of this Ruling. The issue of costs shall be determined at the conclusion of the main application.


I.H. Juma
JUDGE
08-10-2010

Delivered in presence of:

Mr. Kashumbugu, Adv. For the Applicants

1st Respondent - Absent

Mr. Matunda, Adv. for 2nd Respondent


I.H. Juma
JUDGE
08-10-2010

