

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM MAIN REGISTRY

MISCELLANEOUS CIVIL APPLICATION NUMBER 28 OF 2010

HARIDI NDANDO.....

APPLICANT

VS

THE ATTORNEY GENERAL.....

1ST RESPONDENT

THE PRINCIPAL COMMISSIONER OF PRISONS

2ND RESPONDENT

Ruling

Date of last Order: 09-06-2010

Date of Ruling: 30-08-2010

JUMA, J.:

HARIDI NDANDO a former prison officer, has brought this application under section 2 (3) of the **Judicature and Application of Laws Act**, section 19-(3) of the **Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310**. He seeks the leave of this court to apply for prerogative orders of *Certiorari* and *Mandamus*. Leave of this court to apply for an order of *Certiorari* is intended to remove the decision of the PRINCIPAL COMMISSIONER OF PRISONS (2nd respondent) to dismiss him from his employment as a prison officer. The applicant contends that the 2nd respondent dismissed him without according him the opportunity to be heard thus violating the principles of natural justice. With respect for the leave to apply for an order of *Mandamus*, the applicant would like to compel the 2nd respondent to re-instate the applicant back to his

former position of employment or pay all the terminal benefits due to the applicant.

The supporting Affidavit which the applicant affirms in support of his application provides the background facts that led to this application for leave. The applicant was employed by the Prisons Department headed by the 2nd respondent from 1980 to October 2008 when a prisoner had escaped while he was in his custody. The applicant was a result subjected to disciplinary proceedings culminating with his dismissal from prison service. On 5th October 2009 the applicant sent a legal notice to the ATTORNEY GENERAL (1st respondent) expressing his intention to sue the Government under section 6 of the **Government Proceedings Act, Cap. 5 R.E. 2002.**

When this application came up for a mention on 14th May 2010, Mr. Mweyunge the learned State Attorney who appeared for the 1st and 2nd respondents requested for more time to file respondents' response. On the same day the respondents filed the notice to raise preliminary objection contending that this Court has no jurisdiction to hear this application for leave because the application is already time barred.

Submitting in support of preliminary point of objection the 1st and 2nd respondents cite section 19-(3) of the 19-(3) of the **Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310** as directing that application for leave to apply for judicial review shall not be made later than six month after the date of the

proceeding sought to be judicially reviewed. Respondents assert that the applicant received the letter dismissing his appeal on 1st June 2009 and should have filed his application for leave within six months of receiving the letter dismissing his appeal. The six month interlude elapsed on 1st December 2009 while the applicant filed his application on 8 April 2010 which was way outside the prescribed six month period. According to the respondents, the fate of this time-barred application for leave should be dismissed as clearly directed by section 3 of the **Law of Limitation Act, Cap. 89**.

In his replying submissions, the applicant maintained that his application for leave to apply for prerogative orders is within the time prescribed by section 19-(3) of the **Law Reform (Fatal Accidents and Miscellaneous Provisions) Act**. The applicant explains that he received a copy of judgment of the appeal on 4 October 2009 and he filed this application for leave on 8th April 2010 and his application is thus within prescribed time.

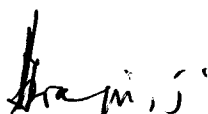
After hearing submissions from opposing side I must point out that on the issue of limitation, the law is clear to the effect that this court shall not exercise its judicial discretion to grant leave if an application for leave is made later than six months after the occurrence of an event sought to be judicially reviewed. The applicant has in his written submissions suggested that the six month period should be counted from 4 October 2009 when he received a letter rejecting his appeal but not on 1st June 2009

when this letter is dated. I have looked at the affidavit which the applicant affirmed in support of his application and also the Statement containing the grounds in support of his application for leave. With due respect, I could not find anywhere the applicant affirming that he indeed received the letter rejecting his appeal on 4 October 2009. Records show that on 8th June 2010 when he filed his reply to the preliminary objection, the applicant indicated that he received the letter rejecting his appeal on 29 September 2009. The applicant changed this date of 29 September 2009 to 4 October 2009 later after reading the written submissions by the respondents when he filed his reply to the respondent's written submissions. In the absence of any indication that the applicant received the letter rejecting his appeal on 4 October 2009 to come up with this date during the course of his replying written submission is nothing but an afterthought on the part of the applicant.

Having found that the application for leave is time barred, the next question is what should be the fate of this time barred application before this court. Respondents have suggested dismissal of the application. Court of Appeal in **HEZRON M. NYACHIYA vs. 1. TANZANIA UNION OF INDUSTRIAL AND COMMERCIAL WORKERS 2. ORGANIZATION OF TANZANIA WORKERS UNION CIVIL APPEAL NO. 79 OF 2001 (At DSM)** provides a useful guidance which I will apply to this application for leave. Court of Appeal stated that **Law Reform (Fatal and Accidents Miscellaneous Provisions) Act Cap 310** does not prescribe the

consequence when such proceedings are instituted out of time without leave of the court. The Court of Appeal suggested that the **Law of Limitation Act, Cap 89** has section 3 which prescribes dismissal as the consequence where a proceeding is instituted out of time without leave of the Court.

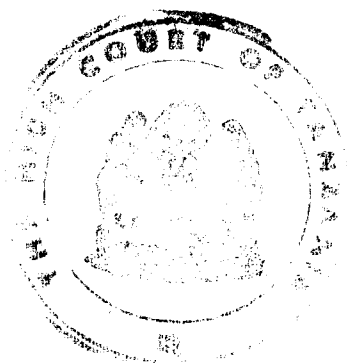
For the foregoing reasons this application is hereby dismissed with costs.



I.H. Juma
JUDGE
30/08/2010

Delivered in presence of:

Haridi Ndando (the applicant)



I.H. Juma
JUDGE
30/08/2010