

IN THE HIGH COURT OF TANZANIA

(AT DAR ES SALAAM)

MISC CIVIL APPLICATION NO 88 of 2010

SHABANI H. OMARI..... APPLICANT

VS

HON. ATTORNEY GENERAL.....RESPONDENT

RULING

Date of last order: 09-03-2011

Date of Ruling: 15-04-2011

JUMA, J:

On 5th day of July 2010 the applicant Shabani H. Omari filed this chamber application under sections 14 (1) and 45 of the **Law of Limitation Act Cap 89 R.E. 2002**, section 95 and 68 (e) of the **Civil Procedure Code, Cap. 33 R.E. 2002** seeking an enlargement of time to enable him to apply for prerogative orders. In support of his application the applicant affirmed an affidavit which provides the factual background information leading up to this chamber application. The applicant joined the Tanzania Prisons Force in 1979 when he was employed as Staff Sergeant till 14th January 2009 when his employment was terminated after being charged with a serious disciplinary offence. According to the documents annexed to his affidavit, it is alleged that in the night of 29th August 2008 the applicant raped a wife of his prison colleague. On 1st

September 2008 the applicant was charged with a disciplinary offence of raping a wife of his colleague and was subsequently discharged dishonourably from the prisons service. On 2nd February 2009 the aggrieved applicant appealed to the Commissioner General of Prisons (*Kamishna Mkuu wa Magereza*) contending that he did not commit the alleged rape. In his letter dated 1st July 2009, the Commissioner General of Prisons rejected this applicant's appeal. Similarly on 11 November 2009, the Minister of Home affairs rejected further appeal which the applicant had lodged.

Reasons explaining why the applicant could not apply for leave to apply for prerogative orders are is contained in paragraphs 6 and 7 of his affidavit:

6. "after the decision by the Permanent Secretary, Ministry of Home Affairs I didn't appeal or take any legal action due to my family problems where I was supposed to attend my sick parents (father and mother) in Bahi Dodoma who were serious sick at all material time and unfortunately my father passed away on 12th January 2010 at Dodoma Regional Hospital and my mother is still very serious sick up to this moment"

7. Also, I didn't take action because I was required to pay for my children's school fees and other basic needs, so at the whole period it was necessary for me to find for the said school fees since I have no other source of income.

The respondent Attorney General through a counter affidavit sworn by Mr. Nicholas Mkapa the learned State Attorney has opposed all the reasons which the applicant has advanced to explain his delay to apply for judicial review within the prescribed

time. When this application came up for hearing on 9th March 2011 Mr. Aliko Mwamanenge the learned counsel represented the applicant. The respondent was represented by Mr. Nicholas Mkapa. Submitting in support of the application, Mr. Aliko Mwamanenge basically reiterated the family problems the applicant had earlier affirmed in his affidavit. In his brief replying submission, Mr. Mkapa suggested that instead of resorting to judicial review, the applicant should have first exhausted appellate avenue under **Police Force and Prisons Service Commission Act, Cap. 241**.

Having perused the application and after hearing submissions made by the two learned counsel, it is common ground that the applicant wants this court to exercise its judicial discretion under section 14-(1) of the **Law of Limitation Act** to enlarge the time to enable the applicant to apply for judicial review. The relevant section 14-(1) provides-

Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

My ruling will be determined by the issue whether the applicant has *prima facie* shown any reasonable or sufficient cause for me to extend the period of limitation to enable the applicant to institute an application for judicial review. Decision of the Minister

was made on 11th November 2009 whereas the applicant filed his chamber application on 5th July 2010 i.e. almost three months after the expiry of the 6-month period prescribed for applications for leave to apply for judicial review. The applicant has advanced family reasons which he supported with hospital records of his late father's illness.

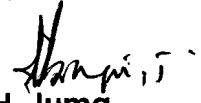
From the affidavit of the Applicant I am able to conclude that the applicant has shown reasonable and sufficient cause by accounting for the three-month delay to apply for leave to apply for prerogative orders of this court. At this stage where the applicant is seeking an enlargement of time this court is not concerned with the question whether or not he had exhausted the appellate process before applying for judicial review. That question shall be determined when the applicant applies for leave.

For the foregoing reasons, the applicant is granted 30 days from the date of this Ruling to file the intended leave to apply for judicial review. No order is made as to costs.


I.H. Juma,
JUDGE
15-04-2011

Delivered:

For applicant: Absent
For respondent: Ms. Lesurizi – State Attorney


I.H. Juma,
JUDGE
15-04-2011

