

**IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM  
(MAIN REGISTRY)**

**MISC. CIVIL APPLICATION NO. 104 OF 2017**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN  
ORDER OF CERTIORAI AND MANDAMUS AGAINST THE RESPONDENT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEAVE CHALLENGING THE  
DECISION OF THE PRESIDENT OF THE UNITED REPUBLIC OF  
TANZANIA**

**BETWEEN**

**STEPHEN B. K. MHAUKA.....APPLICANT**

**AND**

**THE DISTRICT EXECUTIVE DIRECTOR;**

**MOROGORO DISTRICT COUNCIL.....1<sup>ST</sup> RESPONDENT**

**THE SECRETARY;**

**PUBLIC SERVICE COMMISSION .....2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

*12/04--15/05/2018*

**Khaday, J.**

The applicant, Stephen B. K. Mhauka is moving the court to grant him leave to file an application for *Certiorari* to quash and to set aside the decision of the President of the United Republic of

Tanzania, which ended his employment with the 2<sup>nd</sup> respondent. The applicant is also seeking an order of *Mandamus* to compel the 1<sup>st</sup> respondent to reinstate him to his former position and confers him with all entitlements. He preferred his application under the mandate of Rule 5 (1) and (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules 2014. The chamber application is accompanied by a statement and an affidavit sworn by the applicant himself.

The matter has a brief and non-controversial historical background. The present applicant was an employee of the 1<sup>st</sup> respondent; the District Executive Director, Morogoro District Council as a civil engineer until on 6/3/2011 when he was dismissed from employment. Dissatisfied, the applicant appealed to the Public Service Commission but lost. Undauntedly, the applicant lodged his second appeal to his Excellence the President of the United Republic of Tanzania, but equally lost.

The applicant is now before this court, searching for the remedies stated earlier. His complaints have been that his dismissal from the work was based on fabricated stories and that the 1<sup>st</sup>

respondent acted without good faith, and is in violation of the procedures, hence contravention of the principle of natural justice, in particular; right to be heard.

On the other hand, the 3<sup>rd</sup> respondent did not only oppose the application, but also did raise a notice of preliminary objection on points of law to the effect that :-

- 1. That the application is time barred.*
- 2. That the application is bad in law for want of proper citation of enabling provision of law.*

Submitting in support of the 1<sup>st</sup> limb of the preliminary objection, Mr. Baraka Nyambita learned State Attorney submitted that the applicant was dismissed from employment in 2011, but that he has failed to file his application within the statutory time. The learned Sate Attorney appreciates the fact that initially the applicant filed an application for leave to apply for prerogative orders in time, but he withdrew the same. That this was followed by a successful the application for extension of time that was granted on 6/7/2017. That

the applicant was thereby given leave to file his intended application for judicial review within 30 days from the said 6/7/2017. Indeed, the applicant complied with the order and effected filing of his application within time so set, but that the same was struck out on 26/10/2017. That on 10/11/2017 the applicant filed a similar application now at hand.

The learned State Attorney argued that this current matter is time barred since it has been filed outside 30 days so set by the court in its order dated 6/7/2017. He further emphasized that regardless the filing of the application (that was filed within time) but that was struck out, the time limitation remains constant or effective.

The learned counsel referred to the provision of Section 3 of the Law of Limitation Act, Cap 89 [RE: 2002] to suggest the remedy available for the matter filed out of time, which is to dismiss it for being time barred.

On the other hand, the applicant through the assistance from the Legal and Human Right Centre (LRHC) filed his written submission in response to the one filed by the State Attorney. In

that, he conceded to the fact that this application at hand has been filed outside the time he was granted on 6/7/2017. He however said that the similar application that was filed within the time was struck on 26/10/2017. His argument is that the time spent in pursuing the application for leave that was struck out should not be counted when computing the time required to file the application of this nature. He based his argument on the provision of Section 21 (2) of the Law of Limitation Act, Cap 89 [RE: 2002] in which it has been provided that:

*In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence, another civil proceedings, whether in a court of first instance or in a court of appeal, against the same party, for the same relief, shall be excluded where such proceeding is prosecuted in good faith in court which, from defect of jurisdiction or other cause of a like, is unable to entertain it.*

The applicant further argued that he was pursuing in good faith his application for leave which was struck out due to wrong citation

of the law, hence the time spent on the abortive matter should be discounted when computing the time upon which this application at hand was filed.

Much as I agree with the applicant that Section 21 (2) of the Law of Limitation Act provides for an exception of time spent in pursuing a relevant matter in court (when computing time limits), I find it difficult to hold that in the matter at hand, this provision of law does apply. In this, I am of the understanding that the application of this law is relevant when the court is handling an application for extension of time and not otherwise. In other words, the time spent in court for the relevant matter is among the good and sufficient grounds to be advanced by a party when applying for extension of time to file a matter in court of law.

In our case, it is not a dispute that on 6/7/2017 in Misc. Application No. 7 of 2017, the court granted the applicant 30 days time within which he could file his application for judicial review. It is not also a dispute that the present application was filed on 10/11/2017, which is almost 125 days from the relevant order of the court dated 6/7/2017. Meanwhile, relying on the provision of Section

In other words, the cited provision of law should not act automatically to effect extension of time and to justify late filing of the matter at hand. In law, the court cannot extend time to file a matter in court without being moved by a party in need. This was what was held by the Court of Appeal in the case of Abdulrasul Ahmed Ahmed and 3 Others vrs Parin A. Jaffer & Another, Civil Appeal No.5 of 1994, (DSM, unreported) in which it was held that:-

*"The court's discretion under Section 14(1)...should be exercised only upon an application being made to the court in that behalf, and both sides have been given the opportunity to be heard. Such approach puts the court in a position where it can properly determine whether or not, reasonable or sufficient cause has been disclosed for extending the time and serves to ensure that the court's discretion is exercised judicially".*

So was the holding of the Court of Appeal in Aidan Chale vr R, Criminal Appeal No. 130 of 2003 (Mbeya, unreported), in which it was reiterated that:-

*"...a court should not act sou motu in favour of a party by assuming the existence of a request to it to extend the period limited by statutes for bringing an appeal to it. To do so could lead to subversion to the very purpose for which a limitation period to appeal was statutorily fixed for both the private individual and the Director of Public Prosecutions."*

In our case, the applicant never asked for, leave alone to be granted extension of time within which he could file his intended application even beyond 30 days period he was granted on 6/7/2017. Under this circumstance, and as said earlier, the court cannot disregard or vacate its order dated 6/7/2017 and proceed to entertain this application on mere ground that the applicant was in court pursuing a related matter; thus late in filing this application within a given time.



The applicant has to apply and to obtain leave of the court to file his matter out of time. Failure of which renders the present application incompetent for being preferred out of time.

With the outcome of the 1<sup>st</sup> ground of the preliminary objection, I find no fruitful purpose to discuss the 2<sup>nd</sup> ground of the preliminary objection. The ground is hereby disregarded.

At this end, the applicant's application is hereby struck out with costs for being filed out of time and without leave of the court to do so.

It is so ordered.



  
P. B. Khaday,

JUDGE

15/5/2018

Judgment delivered at Dar Es Salaam this 15<sup>th</sup> Day of May 2018.

  
Deputy Registrar,

High Court, Main Registry