IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

(MAIN REGISTRY)

MISCL. CIVIL APPLICATION NO: 112 OF 2017

EX POLICE No. E5812 PC RENATUS ITANISA.....APPLICANT

VERSUS

THE INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

3/4 – 22/5/2018

Khaday, J.

The applicant; Ex-Police No. E5812 PC Renatus Itanisa is seeking for extension of time to file an application for leave to apply for prerogative orders against the decision of the 1st respondent; the Inspector General of Police in which he was dismissed from the work. Through the same application, the applicant also intends to seek for reinstitution to his work and to be paid his dues from the date of dismissal to the day of reinstitution.

The application has been brought to court by a way of chamber summons, pursuant to Section 14 (1) of the Law of Limitation Act, Cap 89 [R.E 2002] and Rule 17 of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014.

In his affidavit in support of the chamber summons, the applicant has averred that he was unfairly dismissed from the police force on 11/6/1996 on allegation of corrupt transactions. That his appeal to the higher authority failed on 5/10/2001 (Annexture R1 to the affidavit). That thereafter, he successfully applied for prerogative orders of Certiorari and Mandamus before the High Court vide Misc Civil Cause No. 29 of 2003, in which the 1st respondent was ordered to see to it that the matter is re-determined before the proper authority. The High court decision was delivered on 18/11/2005.

The applicant further stated that, having won the battle before the High court, the matter was placed before the 1st respondent for his necessary action. That however, despite close follow up, the applicant could not get any response until on 26/10/2017 when he received a letter from the office of the Permanent Secretary; Ministry of Home Affairs informing him that his matter had been determined by the 1st respondent against his favour way back in 2006.

At paragraph 9 of the same affidavit, the applicant has stated that he was not able to file his intended application for leave because the decision of the 1st respondent was not communicated to him within time.

Meanwhile, it is a complaint by the applicant that his appeal was dismissed without him being accorded a right to be heard and or informed of the said decision.

On the other hand, the respondents have resisted the application. Being represented by the office of the 2nd respondent; the Attorney General, the respondents filed a counter affidavit to that respect.

That matter was argued by way of written submission.

In support of the application, the applicant has no much to say. He reiterated what has been said in his affidavit. He further said and argued that the reason so advanced is good and sufficient ground to justify the granting of the remedy sought. He cited the High court cases of Rajabu Kadimwa Ng'eni and Another (1991) TLR 38 and that of Samson Kishosha Gabba vs Charles Kingongo Gabba (1990) TLR 133 to support his argument that extension of time may be granted where there is explanation not only on the length of time, but

This was followed by a long period of silence. However, more than ten years thereafter, on 13/3/2017 to be precise, the office of the Minister of Home Affairs wrote a letter to the 1st respondent with ref no GA/02/349/01/136; asking to know the outcome of the appeal lodged by the applicant thereat. In the said letter, the 1st respondent also made a reference to other two letters apparently sent to the 1st respondent earlier over the same issue. The letters so referred were dated 25/7/2016 and 5/10/2016. This was followed by a response by the 1st respondent; a letter with reference no. PHQ/PF/EX.E5812/38 dated 27/4/2017. In that, the 1st respondent informed the Permanent Secretary to the Ministry of Home Affairs that the matter had been concluded since 03/10/2006. He attached thereto, Annexture 5 cited above.

Having availed with the information, the Permanent Secretary conveyed the said information to the applicant through Annexture 3.

It is at this juncture that the applicant decided to come to this court seeking for extension of time to file an application for leave to apply for orders of Certiorari and Mandamus as said earlier.

A pertinent question here is whether the applicant has successfully moved the court to exercise its discretional power to grant the remedy sought as envisaged by Section 14 (1) of the Law of Limitation Act, Cap 89 [RE: 2002]. The law is very clear that the court can exercised this discretion only where there is good and sufficient reason to do so.

From the submission of the applicant, one can note that the only reason so advanced by the applicant to

justify delay in filing his intended application is delay in receiving or obtaining the outcome of his matter that was placed before the 1st respondent. However, as hinted above, there is evidence that the 1st respondent informed the applicant of his decision on the matter vide Annexture 5 dated 3/10/2006. Meanwhile in his affidavit, the applicant never denied to have either received Annexture 5 or to have disowned the above cited address.

Furthermore, there is no evidence or even explanation from the applicant as to why the applicant had failed to make a follow up of the matter with the 1st respondent from the day he lodged the same in 2006 to the year 2016 when he started making a follow up with the Ministry of Home Affairs in 2016 as reflected in a letter by the Permanent Secretary to the 1st respondent dated 13/3/2017. It is not convincing at all that one can

make constant visits to the 1st respondent for the period of ten (10) years without lodging any formal complaint thereat, or to any other authority. In our case, one would expect the applicant to write a letter of complaint to the 1st respondent in order to know the position of the matter. Alternatively, upon non-response, the applicant could have written another letter to the Permanent Secretary to the Ministry of Home Affairs over the same subject. And these could have been done within a reasonable time and not after ten years of silence. In other words, the applicant have failed to convince the court that he was diligently making a follow up of the matter within those ten years and that the present application is not an afterthought. There is no piece of evident to support him in that respect.

The applicant said that he came to know the outcome of his matter through the office of the Minister

for Home Affairs on the 26th October 2017. However, he could not tell the court as to why he took another forty 34 days to file this application even after receiving Annexture 3 from the Permanent Secretary. The matter at hand was filed on 30/11/2017.

I subscribe to the decision in Lyamuya Construction (supra) in which the prerequisites for grant of extension of time were set to include that the applicant must account for all the period of delay, that the delay must not be inordinate, that the applicant must show diligence, and not apathy, negligence or sloppiness in prosecution of the action that he intends to take.

With due respect to the applicant, I find that in our case the applicant has failed to account for the delay not only for the days lapsed after he had received information of his case, but also for the time after the

decision of the 1st respondent that was made in 2006. He ought to have accounted for each day of delay as provided by the law.

In the end, I dismiss the application for extension of time for want of merit. I however make no order as to costs. Each part to bear own costs.

It is so ordered.

P. B. Khaday,

JUDGE

22/5/2018

Judgment delivered at Dar Es Salaam this……Day of May 2018.

Deputy Registrar,

High Court, Main Registry