

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**



**(MAIN REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 83 OF 2017**

**SHABIBU BADI MRUMA.....APPLICANT**

**VERSUS**

**MZUMBE UNIVERSITY.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

*06/06&17/07/2018*

**RULING**

**MWANDAMBO, J**

This is an application for extension of time made under section 14 (1) of the Law of Limitation Act, cap 86 [R.E. 2002] (the Act) for extension of time to file an application for judicial review. The application is supported by four affidavits deposed by Shabibu Badi Mruma (the Applicant), Alpha Boniphace, Audax Kahendaguza Vedasto and Dismas Muganyizi. The Respondents who are represented by the Attorney General have filed the corresponding counter- affidavits opposing the application.

The facts leading to the application are fairly straight forward. The Applicant graduated from the 1<sup>st</sup> Respondent and awarded a degree of Bachelor of Laws (LL.B) in December 2013. Subsequently, the Applicant was enrolled with the Law School of Tanzania where he obtained a post graduate Diploma in Legal Practice and later he was admitted as an Advocate practicing law in Arusha. Unknown to him, the senate of the 1<sup>st</sup> Respondent resolved to withdraw the Applicant's law

degree at its 67<sup>th</sup> meeting held on 25<sup>th</sup> November 2016. According to the Applicant he was neither informed of the Respondent's prior to withdraw his degree nor did it communicate that decision to him any time thereafter. The Applicant avers and this is not seriously denied that the first time he knew of the withdrawal of his degree was 31<sup>st</sup> July 2017 when a colleague (Alpha Boniphace) whose affidavit is annexed to the chamber summons congratulated him for having successfully sorted out the withdrawal of his degree that enabled him to resume his legal practice. It became apparent out of the discussion with Alpha Boniphace, that the Applicant's had been withdrawn without his knowledge but since he had no further details, he made efforts to trace same through newspapers at a Regional Library in Arusha.

On 1<sup>st</sup> August 2017 the Applicant managed to read notice posted in Mwananchi Newspaper of 10<sup>th</sup> March 2017 in which the 1<sup>st</sup> Respondent informed the general public about its decision made on 25<sup>th</sup> November 2016. Armed with that information, the Applicant engaged Auda & Company Advocates to challenge the 1<sup>st</sup> Respondent's decision by way of judicial review but since time for doing so had already expired, he had to apply for enlargement of time which he did on 11<sup>th</sup> August 2017 vide Miscellaneous Civil Application No. 67 of 2017. Due to discovery of some defect in the affidavit annexed to the chamber summons, the Applicant's Advocate had the application marked withdrawn with liberty to refile it. That happened on 20<sup>th</sup> September 2017 and a fresh application was filed on 29<sup>th</sup> September 2017.

Based on the foregoing averments, the Applicant prays for extension of time to file an application for judicial review to remove into the High Court to quash the decision of the 1<sup>st</sup> Respondent to withdraw his law degree without affording him a hearing resulting into suspension of legal practice he had started on 1<sup>st</sup> January 2017 after being admitted to the roll of Advocates.

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The Respondent's counter-affidavits are a denial of most of the facts while in others the deponent simply takes note the averments in the affidavits including the fact that the 1<sup>st</sup> Respondent posted a notice in Mwananchi Newspaper on 10<sup>th</sup> March 2017 informing the general public about the withdrawal of the Applicant's law degree.

After the disposal of preliminary objections, my predecessor (Khaday, J) ordered the learned Counsel to file their respective submission for and against the application. I am grateful for the energy that the learned Advocates have spent in articulating the issue particularly Mr. Audax Kahendaguza Vedasto. I beg to be excused if I will not refer to all of the submissions and authorities placed before me.

The learned Advocate for the Applicant has approached the application on several fronts and I think correctly so. These are: reasons for the delay, length of the delay, applicant's diligence and illegality of the decision sought to be challenged. The learned State Attorney followed suit.

From the affidavit, counter-affidavit and the submissions by both the learned Advocate for the Applicant and the learned State Attorney, the following matters do not appear to be in dispute. One, the withdrawal of the Applicant's law degree by the 1<sup>st</sup> Respondent on 25<sup>th</sup> November 2016, want of notice of the decision to the Applicant prior to and after and the Applicant's knowledge of the decision on 1<sup>st</sup> August 2017. There is no dispute that by that time, six months for making an application for judicial review had already expired.

The learned Advocate for the Applicant has submitted that dispute the reason for the delay is none other than the fact that the decision sought to be appealed against was made in the absence of the Applicant and that the 1<sup>st</sup> Respondent did not communicate the said decision to the Applicant. The learned State Attorney was too mean on this in his submissions. I would thus endorse the submissions by the

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learned Advocate for the Applicant relying on Mulla on the Code of Civil Procedure Act V of 1908, 17<sup>th</sup> edition LexisNexis, Butterworth's, and 2007 at page 591.

Having determined the first issue, I will now consider another related issue namely; whether the Applicant acted promptly and diligently upon becoming aware of the decision adverse to him. What is the Court concerned with here is the question whether the Applicant has sufficiently accounted for each day of delay. The learned Advocate for the Applicant has given an account of the events immediately after the Applicant got a hint about the fate of his degree through a colleague on 31<sup>st</sup> July 2017 all through the efforts to peruse newspapers at Arusha Regional Library on 1<sup>st</sup> August 2017 and travel to Dar es Salaam on 2<sup>nd</sup> August 2017 culminating into the filing of Misc. Civil Application No. 67 of 2017 on 7<sup>th</sup> August 2017 withdrawn subsequently on 20<sup>th</sup> September 2017 with permission to file a fresh one which was done nine days later. The learned Advocate relies on **Michael Kweka V. John Eliafaye** [1999] TLR 152 underscoring the Applicant's duty to act promptly upon discovery of an omission in his cause which is what the Applicant did upon discovery of defect in his affidavit resulting into the withdrawal Misc. Civil Application No. 67 of 2017. Similarly, the learned Advocate made reference to **Emmanuel R. Maira v The Executive Director Bunda District Council**, CAT Civil Application No. 66 of 2010 (unreported), **Salvand K. A. Rwegasira V. China Henan International Group Co. Ltd**, CAT Civil Reference No. 18 of 2006 (unreported) and **Fortunatus Masha V. William Shija** [1997] TLR 154 in support of the proposition that where it is shown that the Applicant acted promptly after the discovery of an impugned decision or the striking out of an application or matter on account of technical defect, the court should readily exercise its discretion in the applicant's favour.

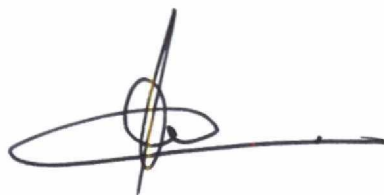
Mr. Kahendaguza has argued and I think rightly so that the Applicant acted promptly and diligently in either case. In that regard I fail to go along with the

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learned State Attorney who contends as he does that the Applicant acted negligently simply because he filed an incompetent application. Contrary to him I am unable to see negligence in the instant application and indeed, it is clear that upon discovery of the defect in the affidavit, the Applicant's Advocate drew the Court's attention on 20<sup>th</sup> September 2017 and applied to withdraw the same with liberty to file a fresh one. By that time the Respondents had not yet filed any counter-affidavit neither had they discovered the defect leading to the withdrawal of the said application. It is not disputed that the instant application was instituted on 29<sup>th</sup> September 2017 after obtaining a copy of the order following a written application made on 20<sup>th</sup> September 2017. I am unable to agree with the learned states Attorney's submissions in this regard and I am satisfied that the authorities he relies upon are easily distinguishable to the present application. On the whole, I am satisfied that the Applicant has accounted for each day of delay warranting this Court's exercise of discretion in his favour.

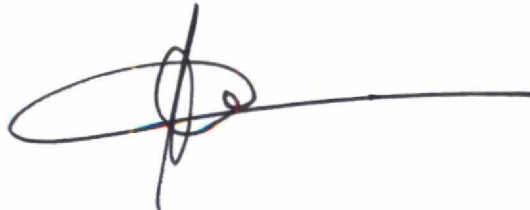
The last point worth consideration and perhaps quite formidable is the illegality of the impugned decision. It is trite law from the authorities placed before me by both the learned Advocate for the Applicant and the learned State Attorney that where the decision sought to be challenged involves illegality, the Court should readily extend time. That is the law derived from the decision of the Court of Appeal in **The Principal Secretary, Ministry of Defence And National Service V. Devram Valambhia** [1992] TLR 182 (commonly referred to as Valambhia's case). However, the learned State Attorney would have me decline to extend time because the Applicant has not established the alleged illegality placing reliance on **CRDB Bank Ltd V. Serengeti Road Service**, CAT Civil Application No. 12 of 2009 (unreported) quoting Valambhia's case (supra). With respect, the learned State Attorney appears to have misconstrued the holding of the Court of Appeal in Valambhia's case when the said Court stated:

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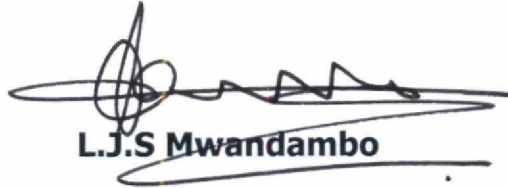
would indicate clearly that the Court is enjoined to extend the time on ground of an alleged illegality which if established at the appellate stage will enable the court or a superior court to take appropriate measures to put it right. A different interpretation of the above phrase will be absurd and I refuse to take that route.

What is clear in this application is that the Applicant has made an allegation that the decision made by the 1<sup>st</sup> Respondent withdrawing his law degree was illegal for offending his constitutional right to be heard enshrined under article 13(6)(a) of the Constitution. The Respondents have said very little against that allegation and indeed they were not required to do so at this stage for they will have their right to make their defence at the stage of the application for judicial review should the Court extend the application. Consequently, I find no merit in the learned State Attorney's argument and I would thus endorse the submissions by the learned Advocate for the Applicant and find merit in the ground on illegality.

In the event and for the foregoing reasons I am satisfied that the Applicant has satisfied the Court of the existence of sufficient cause for the Court's exercise of

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its discretion to extend the time for filing an application for judicial review pursuant to section 14(1) of the Act. The Application is accordingly granted and the Applicant is ordered to file his application within 21 days from the date of this order. Costs shall be in the cause. Order accordingly.



**L.J.S Mwandambo**

**JUDGE**

**17/07/2018**