

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 27 OF 2019

GODWIN BENARD KAGARUKI.....APPLICANT

VERSUS

**THE HON. PRESIDENT OF THE
UNITED REPUBLIC OF TANZANIA.....1st RESPONDENT**

**THE PERMANENT SECRETARY
PUBLIC SERVICE.....2nd RESPONDENT**

THE PUBLIC SERVICE COMMISSION.....3rd RESPONDENT

THE HON. ATTORNEY GENERAL.....4th RESPONDENT

DIRECTOR OF ILALA MUNICIPAL COUNCIL.....5th RESPONDENT

MUNICIPAL COUNCIL OF ILALA.....6th RESPONDENT

RULING

20/02/2020 & 30/03/2020

Masoud, J.

I am set to determine the issue whether the applicant in this application for extension of time to file an application for leave to apply for orders of certiorari and mandamus revision against the decision of the first respondent has good cause entitling the court to exercise its discretion to grant the extension. The application was properly filed under section 14(1) of the Law of Limitation Act cap. 89, having been supported by the

applicant's affidavit. It was however opposed by the respondent who filed a counter affidavit through Mr Stanley Mahenge.

The affidavit of the applicant which informed the applicant's counsel submissions had it that the applicant was a government employee working under the supervision of the fifth respondent in the position of Assistant Medical Officer from 2006 upto 29/07/2015 when his employment contract was terminated by the fifth respondent without the approval of the second respondent. Prior to his termination he had secured a leave without pay from his employer to work with the Permanent Secretary Ministry of Health and Social Welfare as a consultant in Monitoring and Evaluation Assistance for Basic Health Services Project in Katavi and Rukwa Regions. His approved leave was for 11 months from 01/07/2014 to 31/05/2015.

Upon completion of his contract which he was serving during his leave without pay, he reported to his original work on 20/07/2015. Consequently, disciplinary proceedings were initiated against the applicant in relation to his failure to report for work on 31/05/2015 when his leave without pay ended. He was found guilty of the charge and was dismissed. He appealed in vain to the Public Service Commission which

upheld the dismissal. He thereafter appealed to the first respondent who also approved his dismissal. The decision of the first respondent approving the dismissal was brought to his attention on 28/12/2018.

Besides the above, the applicant's affidavit attributed the delay in applying for leave to apply for prerogative orders to the following. He faced difficulties in getting letters from the office of the first respondent, he suffered irreparable loss, he is still suffering irreparable loss, and that the application has a great chance of success.

Replying submissions which were likewise informed by the first, second, and fourth respondents' counter affidavit, in a nutshell, contended that the applicant's dismissal was confirmed by the first respondent's decision delivered on 24/09/2018 which was communicated to the applicant by a letter with ref No. CAB.30/536/PF.287/18 dated 22/10/2018. In all, it was insisted that the applicant has not shown sufficient reasons for the delay.

There was also a counter-affidavit of the sixth respondent which among other things said that the applicant should only blame himself for his absenteeism. It further shown that there was a delay of about 278 days

from 22/10/2018 when the first respondent made his decision on the applicant's appeal to 30/07/2019 when the present application was filed. Yet the days which constituted the delay were never accounted for by the applicant.

A close look at the affidavits and unfolding rival submissions, there is no doubt that the parties delved much on the matters that ought to be brought to the attention of the court in the application for leave to apply for prerogative orders and not in the present application for extension. There was also rival arguments on illegality which is a relevant point in an application for extension.

However, the point on illegality was not relevant in the present application as there was nothing averred in the affidavit on the illegality. To be sure, the alleged illegality in the submissions of the counsel for the applicant was never identified and clearly stated in relation to the impugned decision of the first respondent. The argument by the applicant's counsel is therefore misplaced as very well submitted by Mr Mahenge, learned State Attorney. The case of **Principal Secretary of Defence and National Service vs Devram Valambia** [1992] TLR 185 and others were not applicable in this matter.

Indeed, the applicant is, as argued by the learned State Attorney, bound by his affidavit. Arguments made which do not trace their basis from the affidavit cannot help the applicant nor can they be a substitute of evidence. See, **Tina & Co Ltd and Two Others vs Eurafrica Bank (T) Ltd**, Civil Application No. 86 of 2015 CA; and **Madam Mary Silvanus Qorro vs Edith Donath Kweka and Another**, Civil Appeal No. 102 of 2016 CA.

Going by the issue set out at the beginning, I would say good cause entitling the court to extend the time must have a basis in the applicant's affidavit. The good cause cannot come from submissions which are not consistent with the affidavit on the record. The affidavit in support of the application must therefore be loud and clear on the material disclosing good cause.

It is not in dispute that the law is settled that in considering whether or not to grant extension of time, the court must consider the following: The length of delay; whether the period of delay is inordinate; reasons adduced for the delay and whether they amount to good cause; whether each day of the delay has been accounted for; whether there was inaction, lack of diligence, negligence, inadvertence or laxity; whether

there is an allegation of illegality in the impugned decision; whether the alleged illegality is not just an error in the decision; whether the alleged illegality is apparent on the face of the record; and whether the alleged illegality is of sufficient importance.

There is a plethora of authorities on the above principles which I cannot mention them all here. It should suffice to mention the following as examples, **Lyamuya Construction Company Ltd versus Board of Registered Trustee of Young Women's Christian Association of Tanzania** Civil Application No. 2 of 2010 (unreported); **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007; **Tanzania Rent a Car vs Peter Kimuhu**, Civil Application No. 226/01 of 2017, Dar (unreported); and **A. H. Muhimbira and Others vs John K. Mwanguku**, Civil Application No. 13 of 2005, Mbeya (unreported).

I have in line with the above context examined the affidavit of the applicant consisting of twenty four (24) paragraphs. The contents of paragraphs consist of information about the background to the present application, the processes relating to the disciplinary hearing that led to his dismissal, his appeal against the dismissal and the delay in getting the letter on the outcome of his appeal from the first respondent. Apart

from the complaint on the delay of getting the decision, other reasons adduced in relation to the application for extension were, that the application has a great chance of success, and that the applicant has suffered and continue to suffer irreparable loss.

The complaint of the applicant is that he got the outcome of his appeal through a letter dated 28/12/2018 which had an attachment of the letter of the first respondent dated 22/10/2018 on the said decision was disputed by the fifth and sixth respondents' counter affidavit. The applicant never controverted the counter averment that there was a delay of about 278 days. The delay accrued from 22/10/2018 when the first respondent made his decision on the applicant's appeal to 30/07/2019 when the present application was filed.

In so far as the applicant did not produce the letter at least the one dated 28/12/2018 from which he became aware of the decision, I would find merit in the argument by the counsel for the fifth and sixth respondents on the number of delay which were not accounted for by the applicant's affidavit. Even if I were to count the length of the period of the delay as from 28/12/2018 when the applicant received the said letter as he alleged, the applicant would still be hopelessly out of time

without there being reasons adduced in his affidavit to explain and account for the delay.

The cumulative effect of the above analysis is that the applicant has failed to provide to the court materials disclosing good cause for the court to exercise its discretion to extend time. I so find whilst mindful that illegality was never averred in the affidavit although the applicant's counsel purported to raise from the bar. In the circumstances, the court declines to grant the extension sought within which the applicant could have filed the intended appeal out of time.

In the upshot, the application is not meritorious. It is accordingly dismissed. In the circumstances, I will not make any order as to costs.

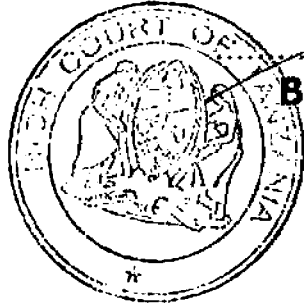
Ordered accordingly.

Dated at Dar es Salaam this 30th day March 2020.


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B. S. Masoud
Judge

Court

The ruling delivered on 30/03/2020 in the presence of the Applicant and Mr S. Mahenge, State Attorney for the 1st-5th respondents and also holding Mr Hussein Kambi's brief for the 6th respondent.



B. S. Masoud
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Judge