

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
MBEYA DISTRICT REGISTRY  
AT MBEYA  
MISC. CIVIL APPLICATION NO. 03 OF 2022**

*(In the matter of the application for leave to apply for orders of certiorari, mandamus and prohibition by BARAKA KILEMILE)*

AND

*In the matter of Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules. 2014 (GN. No. 324)*

AND

*In the matter of Baraka Kilemile who is applying for an application for leave to file an application for Judicial Review against the decision of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to terminate the applicant from employment without following fair procedure of the law.*

**BETWEEN**

**BARAKA KILEMILE.....APPLICANT**

**VERSUS**

**THE TEACHERS SERVICE COMMISSION.....1<sup>ST</sup> RESPONDENT  
MBEYA DISTRICT COUNCIL.....2<sup>ND</sup> RESPONDENT  
THE HONOURABLE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

*Dated: 15<sup>th</sup> & 23<sup>rd</sup> June, 2022*

**KARAYEMAHA, J**

On 24/11/2021 this Court (Mbagwa, J) after hearing the application for extension of time preferred by the applicant granted the same and gave him a period of thirty (30) days to file the application for leave to apply for prerogative orders.

In his endeavours to obey the Court's order, the applicant filed an application for leave to apply for orders of *certiorari*, *Mandamus* and prohibition on 01/02/2022. Along with the counter affidavit sworn by Wilson Saul Nyamunda and the statement in reply, the respondents raised a preliminary objection (the PO) to the effect that this application is time barred.

When the matter came for hearing, the applicant appeared in person fending for himself whereas Mr. Joseph Tibaijuka, learned State Attorney represented the respondents.

Mr. Tibaijuka commenced his submission by adopting the counter affidavit to form part of his submission. He submitted that applicant was late to file the instant application after this court had extended time to a period of 30 days but filed it after 68 days. He stated further that the applicant did not apply for extension of time after the first period had expired. He urged this court to dismiss the application under section 3 of the Limitation Act [Cap. 89 R.E 2019]. He cemented his position by citing the case of **Hezron M. Nyachiya vs. Tanzania Union of Industrial and Commercial workers and another**, Civil Appeal No. 79 of 2001 CAT-DSM (unreported).

Replying, the applicant essentially focused his submission on delay to be supplied with the copy ruling. He said that whereas the ruling was

delivered on 24/11/2021, writing a requesting letter to the Deputy Registrar on 08/12/2021, he was supplied with the copy of ruling on 06/01/2022. Since the period to apply for judicial review was extended for 30 days he was already late. Guided by section 19 (b) of the Law of limitation Act, he submitted that the period he waited to be supplied with the copy of ruling should be excluded in computing the time to file the application and start counting from 06/01/2022.

In his very short rejoinder, Mr. Tibaijuka the applicant had to apply for extension of time and advance reasons he stated in his submission. He went on rejoining that section 19 (2) of the Limitation Act cited governs appeals and applications for review of judgments not judicial review applications. Wounding, Mr. Tibaijuka remarked that the law does not require a ruling to be attached to the application for review.

I have carefully considered the contending submissions by both parties. The issue to be determined is whether the instant application is time barred.

Undisputedly, the applicant was allowed a period of 30 days to file the application for prerogative orders vide Misc. Civil Application No. 67 of 2020 for the date of ruling on 24/11/2021. So, he was supposed to file the application for prerogative orders on 24/12/2021. He, however, filed the same on 01/02/2022, that is, after 68 days as correctly observed by Mr.

Tibaijuka. As to why he was late, the applicant blamed this court for delaying to supply him the copy of ruling. He said he received it on 06/01/2022 and urges this court to count 30 days from there. It is true that the applicant was informed on 06/01/2022 that copies of ruling and drawn order were ready for being collected through a letter dated 06/01/2022 by the office of the Deputy Registrar.

In view of the applicant's argument, I am of the considered opinion while agreeing with Mr. Tibaijuka that since the applicant was late to file the current application was to apply for another extension of time and advance the reasons for his lateness of failure to comply with the order of filing his application within 30 days. The settled position in our jurisdiction is that whoever desires to pursue his rights of appeal or challenging any decision but is caught up by time limit, must first apply for extension of time. It is through that application, he has a wide ground of explaining reasons for his lateness.

In the instant matter, he applicant admits that he was late to apply for leave and has good reasons. My understanding of the law is that I am not moved in this application to extend time by excluding the period the applicant was waiting for the copy of ruling. To put it in simple language, I cannot exercise my discretion to grant extension of time in this application



while I am not asked to do so. In the light of the discussion above, the applicant's argument or defence is baseless.

I have considered the objection and I think each part agree that the application is time barred. As to what effect of an application which is time barred is, Mr. Tibaijuka submitted that it is to be dismissed under section 3 of the law of limitation Act [Cap 89 RE 2019]. The question that comes to the fore at this juncture is whether the Law of Limitation Act applies in application filed under the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules. 2014 (GN. No. 324). The Court of Appeal answered this question in the case **Hezron M. Nyachiya** (supra) as follows:

*"Generally speaking, the Law of Limitation plays many roles including the following: One, to set time limit within which to institute proceedings in a Court of law. Two, to prescribe the consequences where proceedings are instituted out of time without leave of the court. Where a period of limitation for any proceedings is prescribed by any other written law, the provisions of the Law of Limitation apply as if such period of limitation had been prescribed by the Law of Limitation Act."*

The observation of the Court of Appeal premised under section 46 of the Law of Limitation Act which provides as follows:



*"46. Where a period of limitation for any proceeding is prescribed by any other written law, then, unless the contrary intention appears in such written law, and subject to the provisions of section 43, the provisions of this Act shall apply as if such period of limitation had been prescribed by this Act."*

In the present application, the time limit for instituting the proceedings was 30 days as per this court's ruling. However, the Rules do not provide for the consequences when such proceedings are instituted out time. It is only section 3 (1) of the Law of Limitation Act. Under this section the consequence is that proceedings are instituted out time shall be dismissed whether or not limitation has been set up as a defence. Thus, the applicant's application being filed out of time without leave to do so vide application for extension of time deserves to be dismissed.

In conclusion, the PO is sustained and the application is dismissed. Each part should bear it own costs.

It is so ordered.



Dated at **MBEYA** this **23<sup>rd</sup>** day of **June, 2022**

A handwritten signature in black ink, appearing to be "J. M. Karayemaha", written over a horizontal line.

**J. M. Karayemaha**  
**JUDGE**