

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISC. CAUSE NO. 05 OF 2021

IN THE MATTER OF AN APPLICATION FOR ORDER(S) OF
MANDAMUS/ PROHIBITION/ CERTIORARI

IN THE MATTER OF JUDICIAL REVIEW

BETWEEN

HAMIS PETRO MAGELE.....APPLICANT

VERSUS

MZUMBE UNIVERSITY.....1ST RESPONDENT
THE HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT

R U L I N G

Dated: 15th & 23^d June, 2022

KARAYEMAHA, J

On 26/11/2021, Hamis Petro Magele, moved the court under Rule **8(1)(2)(3) and (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules. 2014 (GN. No. 324)** (hereinafter, the Rules) for orders of this court undertaking Judicial Review against the decision of the 1st respondent (Mzumbe University) and declare the same null and void for being in excess of powers and for being in violation of cardinal principles



of natural justice and allow the applicant to resume his studies at Mzumbe University.

Prior filing this application, as a requirement of the law entails, the applicant sought for leave in this court. Leave was granted on 07/09/2021. However, the applicant did not file the current application promptly rather filed it on 26/11/2021 after 80 days had elapsed.

This belatedness in the filing of the application caught the attention of Mr. Joseph Tibaijuka, learned State Attorney who appeared for the respondents. Along with the counter affidavit sworn by Eveline Kweka and the statement in reply, the respondents raised a preliminary objection (the PO) to the effect that this application is time barred. Mr. Tibaijuka's contention was that this application was to be filed within 24 days after the leave to apply for judicial review was granted in terms of rule 8 (1) (b) of the Rules. He finally implored this court to dismiss this application. On this he cited 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) to illustrate his position and section 3 of the law of Limitation Act [Cap 89 R.E 2019]

Submitting in rebuttal, the applicant argued that the delay was not as a result of the fault of his. He submitted that although the ruling was



delivered on 07/09/2021 he was supplied with the same on 27/09/2021, that is, after the lapse of 14 days. He therefore implores this court to exclude days he was waiting to be supplied with a copy of ruling. He wound up by urging this court to overrule the PO while invoking Article 107 A (2) (e) of the Constitution of the United Republic of Tanzania, 1977.

Mr. Tibaijuka's rejoinder is by and large, a reiteration of his submission in chief. On Article 107A (2) (e) of the Constitution, the learned State Attorney submitted that its gist is entailing an overriding objectives which does not cure issues of time limit which touch the jurisdiction of the court. He held the view that on time limit courts are enjoined not to be moved by sympathy but rely on laws of the land. He stated adding that the copy of ruling was not required to be attached to the application by the guiding laws.

I have strenuously gone through the application documents along with the contending parties' submissions. The issue requiring determination is whether the instant application is time barred.

From the record, it is undisputed that the applicant was granted leave to file the present application on 07/09/2021. The ruling of this Court by Hon. Mambi, J. did not specify the time which it extended for

the applicant to make his application. It is also not denied that the applicant filed the instant application on 26/11/2021 after 80 days had lapsed. My understanding of the law is that a court cannot extend the time beyond or less than that prescribed by the law.

I am not alone on this position, the Court of Appeal said in the unreported case of **Betty Mbapa vs. Dipak Vessa and Joseph Moshi**, Civil Appeal No. 48 of 2010 that:

"The High Court in our considered judgment, in granting an order extending the time within which to lodge the notice of appeal was bound by the express provisions of Rule 76 (2) of the Rules. Although the order did not expressly set the time limit for doing so, the same was subject to the limit prescribed in sub-rule (2). Neither the High Court nor this Court for that matter, has jurisdiction to set a limit for the lodging of the notice of appeal beyond the prescribed period or in violation of the express provisions of the law."

In the instant matter, the issue now is what the time was extended by Mambi, J. in his ruling. The answer to this is found under the law which the application was made. In the present application it is Rule 8 (1)(b) of the Rules which provides for fourteen days from the day of the leave was granted. In the premise, the time limit which my

Brother Mambi, J. prescribed in his ruling could not be beyond or less than fourteen days.

Gathering from the parties' submissions, there appears to be a consensus that the instant application was filed outside the scope of 24 days provided for under rule 8 (1) (b) of the Rules. The defence put forward by the applicant is that he was supplied with a ruling after 14 days. He also defended himself that being a student was unable to travel from Sengerema and get the copy on time. After getting it he had no money to engage an advocate to draft an application for extension of time. I am made to understand that the applicant was well aware that after learning that he was time barred he was to get leave of this court to file this application out of time but did not.

I have considered the objection and I think each part agree that the application is time barred. Therefore, no much force is required out of me to determine the question in issue. 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 R.E 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 was 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 24 days under Rule 8(1) (b) of the Rules which is left to speak as follows:

"8-(1) Where a leave to apply for judicial review has been granted, the application shall be made-

(b) Within fourteen days from the day of the leave was granted."

However, the Rules do not provide for the consequences when such proceedings are instituted out of time. It is only section 3 (1) of the Law of Limitation Act. Under this section the consequence is that proceedings 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.

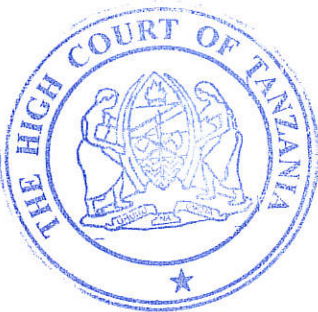
I have considered the applicant's defence of impecunious and distance from his place of domicile, i.e., Sengerema. However, if I attempt to agree with the manner the applicant has prayed and presented himself, I shall be acting on personal whims or sympathy rather than on material necessary for exercising the discretion which is ought to be done judiciously. Borrowing Mwandambo's JA words of wisdom in unreported Criminal Application No. 74/04 of 2019 - **Cosmas**

Faustine vs. Republic that whims or sympathy has no place in the court's exercise of its discretion. See also **Kalunga & Company Advocate Advocates vs. National Bank of Commerce Limited**, [2006] TLR 235.

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

It is so ordered.

DATED at MBEYA this 28th day of June, 2022



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

J. M. Karayemaha
JUDGE