

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

MISC. CIVIL APPLICATION NO. 50 OF 2021

**In the Matter of Application for Extension of Time to Apply for Leave to
Apply for Orders of Certiorari and Mandamus**

**In the Matter of the Decision of the Permanent Secretary, Ministry of
Home Affairs**

BETWEEN

EX. F.6673 PC. MATHEW ANTHONY MLEWA.....APPLICANT

VERSUS

THE PERMANENT SECRETARY, MINISTRY

OF HOME AFFAIRS

THE ATTORNEY GENERAL

.....RESPONDENTS

RULING

09th May & 8th July, 2022

MDEMU, J.:

This is civil application for extension of time to apply for leave for orders of certiorari and mandamus. It is by way of chamber summons in terms of the provisions of sections 14 (1) of the Law of Limitations Act, Cap. 89, R.E 2019; Rule 17 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014; Section 95 of the Civil Procedure Code, Cap. 33 R.E 2019 and Section 2(1) of the Judicature and Application of Laws Act, Cap. 358 R.E 2019. In the chamber summons, the Applicants prays for this Court to extend time to apply for leave for orders of certiorari and mandamus

against the decision of Permanent Secretary in the Ministry of Home Affairs. The application is supported by an affidavit affirmed by the Applicant Ex. F. 6673 PC. Mathew Antony Mlewa on 3rd December, 2021.

Briefly, the Applicant was employed by Police Force in the Ministry of Home Affairs. On 16th February 2016 was charged with disciplinary offences of acting contrary to the Police Force and Auxiliary Services Act, Cap. 322. On 11th June 2016, Dodoma Regional Police Commander found him guilty as charged and terminated him from service. He appealed to the Inspector General of Police on 14th June, 2016 who on 6th March, 2017 upheld the decision of the Regional Police Commander. On 09th March, 2017 he applied for revision of the decision by Inspector General of Police where it was dismissed. His complaint to the Permanent Secretary wasn't successful as on 12th March, 2020, the said Permanent Secretary upheld the decision of the Inspector General of Police. He was further aggrieved by that decision and therefore on 16th July, 2020, applied for leave to apply for orders of certiorari and mandamus but it was struck out for being incompetent, hence this application.

In this application, Mr. Francis Kesanta, learned Advocate represented the Applicant whereas Ms. Jenipher Kaaya, Senior State Attorney represented the Respondents. On 09th of May 2022, the matter

was scheduled for hearing through written submissions. Both parties complied.

Submitting in support of the application, Mr. Kesanta adopted the affidavit in support of the application. He went on submitting that, the Applicant has been active from when he was terminated from service by taking necessary steps to challenge the decision of the higher authorities as stated in paragraph 11 of the affidavit. He only stayed for four months thereafter to apply for orders of certiorari and mandamus within time prescribed by law on 16th July, 2020 which was struck out on technicality. He said, this is the reasons they are asking this extension of time. He cited the case of **Fortunatus Masha v. William Shija and Another [1992] TLR 154** arguing that, given this technical grounds, the Applicant's application be granted by extending time.

In reply, Ms. Jennifer Kaaya, as was to the learned Advocate, adopted their counter affidavit thus resisted the Applicant's application for want of reasonable or sufficient cause. She cited the case of **Lyamuya Construction Company v. The Board of Registered Trustees of Young Women's Christian Association of Tanania, Civil Application No. 2 of 2010** (unreported) on courts' discretion to extend time where the Applicant have accounted for all period of delay and that,

the delay should not be inordinate. She added that, the Applicant must also show diligence and not negligence or sloppiness in the prosecution of the action that he intends to take. If the court feels that there are other sufficient reasons such as the existence of point of law such as illegality in the decision sought to be challenged, then may extend time.

She added that, in his submissions, the Applicant stated to have stayed for four months and thereafter applied for leave to apply for orders of Certiorari and mandamus. It was her submissions further that, the Applicant has shown a sense of negligence in pursuing his matter to relevant authorities as it was not stated as to why he waited for four months to institute his application. She said, this delay should not be left unattended as six months to challenge the decision of the disciplinary authority lapsed because of the Applicant's failure to follow proper procedures when filling his application.

On reasons that the Applicant's application was struck out for being supported by an affidavit wrongly sworn by an advocate instead of him, she argued that, this cannot justify extension of time but rather it shows negligence, ignorance of the law and mistake done by a lawyer, thus non excusable. She cited the case of **Anche Mwedu Ltd and Two Others**

vs. Treasury Registrar (Successor of Consolidated Holding Corporation, Civil Reference No.3 of 2015(unreported).

In accounting for each day of delay, it was her submissions that, the Applicant has not accounted for each day of delay. On this, she cited the case of **Wambele Mtumwa Shahame v. Mohamed Hamis, Civil Reference No. 8 of 2016** (unreported). As to the submissions that the High Court struck out the Applicant's application on technical ground, she said to have no merit and the cited case of **Fortunatus Masha v. William Shija and Another** (supra) got distinguished. She also cited the case of **Tanzania Fish Processors Limited v. Eusto K. Ntagalinda, Civil Application No. 41/08 of 2018** (unreported), that delay of even a single day, has to be accounted for.

In rejoinder, Mr. Kesanta almost reiterated what he submitted in chief. I will not therefore reproduce his rejoinder but rather make reference to it where and when necessary. I have considered both parties' submissions and the available records. The issue before me is whether this application for extension of time has merits.

From the records, there is no disputes that the Applicant is out of time in seeking for leave to apply for prerogative orders. The position of the law is settled and clear that, an application for extension of time is

entirely at the discretion of the Court which is to be exercised judiciously according to the rules of reasons and justice. Additionally, the Court will exercise its discretion in favour of the Applicant only upon showing good cause for the delay. The term good cause has not been defined and cannot be laid by any hard and fast rules but is dependent upon facts obtained in each particular case. See **Regional Manager, Tanroads Kagera v. Ruaha Concrete Company Ltd, Civil Application No. 96 of 2007; Tanga Cement Company Ltd vs. Jumanne D. Massangi and Another, Civil Application No. 6 of 2001; Vodacom Foundation vs. Commissioner General (TRA), Civil Application No. 107/20 of 2017** (all unreported), to mention a few.

Mr. Kesanta in his submissions convinced this Court to find that the Applicant's delay falls under technical delay which amounts to sufficient cause as stated in the case of **Fortunatus Masha** (supra). My perusal to the Applicant's affidavit reveals that, in paragraphs 17,18,19 and 20 is where there is an account for the delay. The said paragraphs are quoted hereunder for easy reference:

*17. That, I was aggrieved by the said decision of the
Permanent Secretary of the Ministry of Home Affairs,
and therefore on 16th July 2020, I applied for leave*

for me to apply for orders of certiorari and mandamus in the High Court of Tanzania as I was within the time limit of six months. Copy of chamber summons and Affidavit is attached as Annexure AM9.

18. That, on 1st December, 2021, my application was struck out for being supported with affidavit sworn by my Advocate instead of me. A copy of the said ruling is attached as Annexure AM10.

19. That, on 2nd December, 2021 through the service of my Advocate and in my presence, a letter requesting to be supplied with the said ruling the same was written which was filed in Court through email hcdodoma@judiciary.go.tz as practice of the Court. A copy letter is attached as Annexure AM11.

20. That, on 3^d December, 2021 this application was prepared and sworn and signed by me.

From the above quoted paragraphs, the Applicant's delay was technical. The said technical delay is well elaborated in the case of **Fortunatus Masha** (supra). It is said to be technical in the sense that,

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the original application or appeal was lodged in time but the same was found incompetent thus a fresh application or appeal has to be instituted.

In the instant application, the original application for leave to file application for orders of certiorari and mandamus was filed in time on 16th July, 2020 via Miscellaneous Civil Cause No. 18 of 2020 which was struck out on 1st December, 2021. On 3rd December, 2021, he prepared this application. The record shows that, it was presented for filing on 17th December, 2021. Much as each delay even of a single day has to be accounted for as stated in the case of **Bashiri Hassan v. Latifa Mashayo, Civil Application No. 3 of 2007** (unreported), in the instant application, the sequence of events enumerated above is evident that the Applicant was prompt to set the law in motion two days after the struck out application, to have this application in place.

In fact, this is a fit case for which extension of time on ground of technical delay may be invoked. The basis of argument from the learned State Counsels may not be associated with what was the case in the struck out application as the said struck out application was in time. That means, from the date the application was struck out for being incompetent, the Applicant was time barred and would not have set the law in motion,

unless time is extended. This, in principle, is the position in the case of **Fortunatus Masha** (supra).

Ms. Kaaya's argument that the Applicant didn't account for the four months before filing an application for leave to file application for orders of certiorari and mandamus is unfounded because under Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure and fees) Rules, 2014; time limit for leave to apply for judicial review is six months. Counting days for delay is only applicable in extension of time but not when one's acts is within time.

In the application at hand, the impugned decision subject to this application was delivered on 12th March 2020, the application by the Applicant for leave to apply for prerogative orders was filed on 16th July, 2020. Therefore, he was within time prescribed by the law. Had it been that the application was competent, the issue of accounting for days of the delay would not have been the case. The same is only applicable in this application from the date the main application for leave was struck out to the institution of the instant application and also as evidence on want of diligence and presence of sloppiness and or negligence on the Applicant in pursuing his case.

All said and done, I find the application to have merits and I proceed to grant the same. Time to apply for leave for an application for certiorari and mandamus is extended for six months from the date of this ruling. Each part to bear own costs.

It is so ordered.



Gerson J. Mdemu

JUDGE

08/07/2022

DATED at **DODOMA** this 08th day of July, 2022.



Gerson J. Mdemu

JUDGE

08/07/2022