

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM**

MISCELLANEOUS CAUSE NO. 26 OF 2022

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS
OF CERTIORARI, MANDAMUS, AND PROHIBITION**

AND

**IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND
MISCELLANEOUS PROVISIONS) ACT, CAP 310 [R.E. 2019]**

AND

IN THE MATTER OF THE PUBLIC SERVICES ACT, CAP 298 [R.E.2019]

AND

**IN THE MATTER OF AN APPLICATION TO CHALLENGE THE DECISION OF
THE 1ST RESPONDENT DISMISSING THE APPLICANT FROM SERVICE VIDE
A DECISION MADE ON THE 18TH OCTOBER, 2018.**

BETWEEN

CHRIS GEORGE KASALILE.....APPLICANT

AND

**TANZANIA INSTITUTE EDUCATION.....1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT**

RULING

Date of Last Order: 21/7/2022

Date of Ruling: 9/8/2022

BEFORE: S.C. MOSHI, J.

The respondents took objection to the application which is made under Section 18 (1) and 19 (2), (3) of **the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [CAP 310 R.E. 2019]** and rule 5 (1), (2) and (3) of the **Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and**

Fess) Rules, 2014 GN 324. The applicant prayed for leave to apply for orders of certiorari, mandamus and Prohibition challenging the decision of the president to uphold the applicant's dismissal from service, for it to be made in excess of powers, being unreasonable, irrational, and ambiguous. He prayed for the following orders: -

- a) *This Honourable court be pleased to grant leave to the Applicant to apply for an order of certiorari to quash and declare the decision of the President to uphold the applicant's dismissal from service are in excess of powers, being unreasonable, irrational, and ambiguous.*
- b) *This Honourable court be pleased to grant leave to the Applicant to apply for an order of Mandamus to compel the President to allow the applicant to be reinstated and compensated for all the months that he has not received his salary and other benefits for all the time since his termination.*
- c) *Costs be borne by the respondents.*
- d) *Any other order(s) that this Honourable Court deems just and equitable to grant.*The respondents were dully served, and as indicated above, they filed a notice of preliminary objection on one point of law that;

"The application is bad in law for being preferred out of time."

At the hearing of the application the applicant was represented by **Jeremiah Mtobesya, Advocate**, whereas the respondents were represented by **Ms. Jesca Shengena, Principal State Attorney and**

George Magambo, State Attorney and Pili Magongo, State attorney.

MS. Jesca submitted in support of the preliminary objection among other things that, the application is bad in law for being filed out of time. She said that, time for filing an application for leave to apply for Judicial Review is prescribed under the **Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014**. It prescribes that, such application should be made within six months after the date of the act, proceedings or decision. She argued that, observance of time limitations which are set by law is mandatory.

She pointed out that, the pleadings which were presented by the applicant is contradictory as at the recitals he challenges the decision which was delivered on 18/10/2018 whereas at paragraph (a) he states that he challenges the decision of the president which was made on 20/12/2021. She contended that, in the circumstances, in either case the applicant is late. If the applicant challenges the decision that was delivered on 18/10/2018 by the 1st respondent, then he has delayed for almost three years or if he challenges the President's decision, which was delivered on 20/12/2021, then he has delayed for one day. She suggested that, the remedy for an application which is filed out of the time limits is

for it to be dismissed. In this respect she cited section 3 of the **law of Limitation Act**, cap. 89 and the case of **Hamis Mfinanga vs. District Council & Others Misc. Cause No. 11/1029**, Mkapa, J. (unreported) at P. 6 – 9. She argued that, in the present case the applicant has filed the application out of time which is prescribed by law, and he has not applied for extension of time.

She submitted further that, even if the applicant argues that he filed the case electronically, yet he has delayed. she cited the case of **Mwaija Omary Mkamba vs. Mohamed Said Msuya and others, Land App. 142/2020**, Mgeyekwa, J. in which the court explained the position relating to the date which is deemed to be a filing date for the case which has been filed electronically. She said that, in the cited case, the court held that, the application is deemed to have been dully filed on the date of payment of court fees; therefore, since there is no evidence of the date of payment of court fees for filing the case thus the application is out of time. She ended her submission in chief by praying that the application be dismissed for being filed out of time.

In reply, **Mr. Mtobesya** conceded that an application for Judicial Review must be filed within six months, and the applicant has filed it within six (6) months therefore the application is not time barred. He

argued that, the applicant was a civil servant, and in the process of handling the matter before this Court was supposed to appeal up to the president. He said that, in view of section 25 of the **Public Service Act**, there is no way would the applicant challenge 1st respondents' decision before appealing to the president. The president's decision was delivered on 20/12/2021. Under the **Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 GN 324 of 2019**, the limitation of time started to run from 20/12/2021.

Concerning contradictions in the recitals and the prayers he said that, counsel for the respondent did not cite any case saying that the recitals bind the applicant as the prayers in the body of the pleadings. He said that, the averments and the reliefs prayed do bind the applicant not the recitals. The cases that have been cited refer to the prayers and not recitals. He argued that, in the case of **Hamis Mfinanga**, (Supra) at P.3 the court refers to the contents of the pleadings and not the recitals. Likewise, in the case of **Peter Bandio (supra)** the Judge quoted prayers. The body of the chamber summons shows that he prays to challenge the president's decision. That means, that the applicant challenges the president's decision not that of the first respondent. Similarly, the relief

prayed at item 4 (1), in the statement, the applicant complains against the president's decision. He contended that, for the applicant indicating that he challenges the 1st respondent in the recitals is just a slip of the pen, which may be remedied by amendment, as rule 7 of **Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 GN 324 of 2019** allows the court to order amendment. The recital does not offend the root of the case. He however prayed that, if it offends the matter, then he in the alternative, be allowed to make amendment of the chamber summons.

Responding on the submission relating to the date of filing electronically, he said that, the issue is at what stage is the case deemed to be filed in court? He cited rule 21 of **The Judicature and Application of Laws (Electronic Filing) Rules, 2018, GN. 148** which reads thus:

"(1) A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected.

"(2) A document submitted at or after midnight or on a Saturday, Sunday, or public holiday shall, unless it is rejected by the court, be considered filed the next working day"

He contended that, first what was raised attracts proof by evidence, which is available in the dashboard, to support his argument he cited the case of **Makoye J.N. Wangeleja Vs. Tanzania Institute of Education & another, Misc. Cause No. 20/2021** from page 5, 6, 7 and 11. He said that, the applicant filed this application electronically on 17th June, 2022 at around 11.00 hours, according to Rule 21 of Electronic filing, that's the date when the document was filed.

He said that, in a similar case of **Makoye J.N. Wangeleja (supra)** page 5, the court cited Rule 10 (5) of electronic filing rules. In the cited case, the court made a finding that the document was filed within time by considering the time which the document was posted. In that case, the court stated further that nonpayment of fees doesn't seize the court's jurisdiction to determine the matter. Whether fees have been paid or not, is an issue of evidence, it is against the principles laid in **Mukisa Biscuit Manufacturing CO. LTD VS West End Distributors LTD (1969) EA**. After the introduction of the electronic filing Rule, rule 10(5) and 21 (1) are very clear, that the document is deemed to have been filed once it has been posted in the system.

He submitted further that, the Court is required to read thorough clear and unambiguous provisions of the Law, and just give it a literal

meaning. It should not do the legislative task. In this regard, he cited the case of **DPP Vs. Juliet Simon Teleka, Administratrix of the estate of Gebu Ichoma Sayi**, Cr. App. No. 94/2019 pg. 15-19.

In rejoinder Mr. **George Magambo** submitted on the issue of contradictions and the cases which were cited, and he said that, if the applicant knows what he prays there was no need to bring up this contradiction. The objection is not based on recitals, she referred to both the recitals and the reliefs.

Regarding time, he reiterated their stand that, the applicant is out of time. He said that, it is true that the law of electronic filing is plain leading to the literal meaning, however, his argument is that the case is deemed to have not been filed, whether electronic or manual without payment of fees.

I have given due weight to the submissions which were made by both parties, the relevant laws and the record. The main issue emanating from the arguments is whether the application was filed out of the time limits which have been prescribed by law. There is no dispute that, the application was filed electronically. It is also clear from the prayers that the applicant challenges the decision of the president who is given final appellate powers to handle the dispute, and it is common ground that,

the applicant cited differently the authority which gave the impugned decision, in the recitals he cited the first respondent's decision and, in the prayers, he cited the president's decision. This shouldn't take much of our time, I at the outset agree with applicant's counsel that the contradiction is a mere slip of the pen as reading through the records, it is obvious that the pleadings taken as a whole refers to president's decision. Having settled this, I revert back to the central issue. The relevant rule providing for time limitation for electronic filing is rule 21 of **The Judicature and Application of Laws (Electronic Filing) Rules, 2018, GN. 148**, and it reads: -

"(1) A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected.

(2) A document submitted at or after midnight or on a Saturday, Sunday, or public holiday shall, unless it is rejected by the court, be considered filed the next working day"

In this case, the record shows that the application was filed electronically on 17th June, 2022 at around 11.00 hours, however, necessary fees were paid on 21/06/2022.

The respondents' counsels were of the view that the application was filed after expiry of time for one day as the necessary fee was paid on

21/6/2022, they said that the determinant factor, whether a case has been dully filed, is payment of fees they argue that, it does not matter whether the case has been filed physically or electronically. On the other hand, applicant's counsel argued that the application was filed within time per rule 21, and he proposed that the rule should be given a literal meaning because its wording is very plain and there is no ambiguity in its writing.

I have read the wording of **The Judicature and Application of Laws (Electronic Filing) Rules, 2018, GN. 148**. It is apparent that the intention of having the rules in place is to facilitate efficiency and speedy delivery of justice in handling cases. Despite the fact that on the face of it, the reading of rule 21 of the rules seems to be plain, yet there is a lacuna since the law doesn't provide for instances which the applicant or claimant files a case electronically well in time but he doesn't pay the necessary fees timely, as is in the present case. Evidently, filing the case electronically, and staying dormant defeats the purpose of the law. It is my view that, to fill in the gap we should look at the purpose of the law and other legal requirements. I have Considered case laws which discuss the question at hand, i.e., 'when the document is deemed to have been filed,' the issue was discussed in the case of **Emmanuel Nakundize and**

Others V. Aloysius Benedicto Rutaihwa, Land Case Appeal No. 26 of 2020 (HC). In this case the court followed the interpretation which was given in the case of **John Chuwa V. Antony Cisa** [1992] TLR 223 where it was held inter alia that, a document is deemed filed, when requisite fees have been dully paid. I also subscribe to the holding in **Mwaija Omary Mkamba (Supra)**.


In this case the applicant filed this application electronically, on 17th June, 2022 at around 11.00 hours, however, he paid necessary fees on 21/06/2022. It is agreed that the time to file the application expired on 20/06/2022. Therefore, counting from the date when the fees were paid, the applicant was late by one day. It is my view that the application was filed out of time; hence the delay was supposed to be explained, however, the applicant didn't prefer any application to seek extension of time in which he would have explained the delay.

The applicant's advocate argued that, the issue whether fees have been paid or not is an issue of evidence, it goes against the holding given in **Mukisa Biscuit' case (Supra)**. With due respect, time limitation is a point of law. The time cannot be ascertained without looking into relevant documents showing filing dates.

All in all, having discussed as I did, I find that the application was filed out of time. Therefore, the preliminary objection on point of law is sustained; consequently, the application is dismissed accordingly.

Each party to bear its own costs.




S.C. MOSHI
JUDGE
9/8/2022