

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF TANGA)**

AT TANGA

CIVIL APPLICATION NO. 41 OF 2019.

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

**IN THE MATTER OF APPLICATION OF EXTENSION OF TIME TO
FILE LEAVE FOR APPLICATION OF JUDICIAL REVIEW**

LANGAEL SANGITO MARX.....APPLICANT

VERSUS

BOARD OF TRUSTEES OF MEDICAL STORES

DEPARTMENTRESPONDENT

RULING

MRUMA,J.

The applicant is seeking for an extension of time within which he can file an application for judicial review. The application was filed in this court on 16th October, 2019. It is supported by affidavit of Mr. Langaël Sangito Marx, the Applicant deponed on 4th October 2019. The application is brought under Section 95 of the Civil Procedure Code, Section 14(1),(2) and (3) of the Law of Limitation Act, and Rule 56(1), (2) and (3) of the Labour Court Rules of 2007 GN No. 106 of 2019.

The grounds upon which the application is premised are contained in the affidavit of the applicant and are:

1. That the Applicant was unfairly terminated by the Director General of Medical Stores Department (MSD) and without proper procedure;
2. That the Applicant appealed to the Respondent but his appeal was rejected.
3. That the Applicant referred the matter to CMA but again his complaint was rejected.
4. That after rejection by CMA he filed revision in this court which was also rejected.

It is the Applicant's contention that the delay in filing Application for leave to file an application for judicial review to claim Tshs.27.489.000/= and other unpaid salaries and for unfair termination was therefore by the fact that the Applicant went to a wrong forum. He filed this application after being advised to do so by this very court.

In the counter affidavit deposed by Jacqueline Kinyasi, learned State Attorney dated 29th November 2019, the learned State Attorney contends that the Applicant has not demonstrated sufficient cause which could warrant the court to exercise its discretion and extend time. That the Applicant filed this application over two months after the judgment of this court which is clear evidence of lack of diligence.

At the hearing of the application, Mr. Ludovick Nickson appeared for the Applicant while Ms. Jacqueline Kinyasi, learned State Attorney appeared for the Respondent. The application was argued by way of written submissions.

Giving a brief history of the matter Counsel for the Applicant submitted that the Applicant was employed by the Respondent as a store attendant on 13th August, 2002. On 5th January, 2015 his employment

was terminated by the acting Director General of the Respondent for unknown reason. An appeal to the Respondent was rejected. In his application to the CMA he was awarded Tshs. 65,000,000/= as unpaid salaries.

The Respondent was aggrieved and she successfully appealed to this court. This court quashed the award and set aside orders subsequent to it. It is the Applicant's contention that he was advised by this court to bring this application.

In reply, counsel for the Respondent opposed the application and submitted that the applicant did not adduce evidence to support his assertions that he was unable to file his application because he was litigating the same matter though in a wrong forum. The learned State Attorney stated that the Applicant had not accounted for the period from 6th August, 2019 when the judgment was handed down to 14th October, 2019 when this application was filed. The learned State Attorney contended further that argument that copies of judgment and proceedings were availed to the Applicant to the Applicant only on 5th October, 2019 is a submission from the bar as it doesn't secure any support in the Applicant's affidavit.

I have considered all the above circumstance and from the reading of Section 14(1) of the Law of Limitation Act, this Court has discretion to extend the time within which a party may do an act if sufficient reason is shown for the enlargement.

Section 14(1) of that law provides that:

14, -(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for institution of an appeal or an application, other

than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

The starting point is to determine whether or not sufficient reason has been shown for the failure to act in time. According to paragraph 7 of the affidavit of Langaël Sangito, he could not file the application in time because he was pursuing the matter in a different forum which happened to be wrong forum. In essence, what he says is that his counsel was negligent in pursuing his matter in a wrong forum.

In determining whether or not an application for extension of time should be granted or not the paramount consideration is that there must be sufficient cause for the failure by the Applicant to apply for leave within time.

The expression 'sufficient cause or reason' is not defined anywhere in the Law of Limitation Act or any other law among those cited by the Applicant, but in any event sufficient reason must relate to the inability or failure to take the particular step in time. For applications of extension of time such as the present one a mistake or negligence of the applicant's counsel may be accepted as a proper ground for granting relief requested. The discretion of court is not fettered as long as sufficient reason shown and the interest of justice calls court's exercise of its discretion in favour of the Applicant.

It is also a trite law that honest pursuing of a Legal cause in a wrong forum is also a good or sufficient cause. Taking the above into account, I find that the applicant had sufficient reason for not filling his application for leave to apply for orders of Mandamus, Prohibition and Certiorari in

time because it was as a result of the mistake of his counsel whom he had instructed to represent but failed him.

In the circumstances of this case, refusal to grant extension of time would cause an injustice to the applicant since the delay was as a result of mistake of his counsel which should not be visited on the innocent litigant. The Respondent will not suffer any injustice for the grant.

In the result, an extension of time being sought is hereby granted.

The Application for extension of time to file leave is to be filed within 14 days from the date hereof.

I so order




A.R. Mruma

Judge

7/2/2022