

IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 17 OF 2022

BETWEEN

ELIAS ZACHARIAH MAGUTTAH.....APPLICANT

VERSUS

TANZANIA INSTITUTE OF EDUCATION.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

Date of order: 1/09/2022

Date of Ruling: 21/9/2022

BEFORE: S.C. MOSHI, J.

The application is made under section 14 (1) of the Law of Limitation Act Cap 89 R.E 2019, and section 95 of the Civil Procedure Code, CAP 33 R.E. 2019. The Applicant seeks the following orders: -

- (a) *That, this Honourable Court be pleased to grant an order of extension of time to file an application for leave to file an application for prerogative orders against the Respondents to challenge the president's decision made on 20th December 2021;*
- (b) *Costs for this suit be provided for;*
- (c) *Any other and further relief the court may deem fit and just to grant.*

The application is supported by applicant's affidavit. On the other hand, the respondents opposed the application, and they filed a counter affidavit to that effect. As gathered from the pleadings, the application hinges on two main grounds: - Firstly, the fact that prior to filing the present application, the applicant had filed Miscellaneous civil cause No. 20 of 2022 to this court timely but the same was struck out on technicalities; by then the time for filing this application had already expired. Secondly, the issue of irregularity of the proceedings subject to this application.

During hearing of the application, the applicant was represented by Mr. Desidery Ndibalema, advocate whereas the respondent was represented by Miss. Kause Kilonzo, State Attorney. The application was disposed of by way of oral submission.

Mr. Desidery Ndibalema submitted in support of the application inter alia that, the applicant filed in this court an application for leave to file an application for prerogative orders, the said application was struck out on 4th July 2022 due to legal technicalities however at the time when the 1st application was struck out, the time to file this application had already elapsed. Immediately after the 1st application was struck out on 4th July 2022, the applicant filed this application on 14th July 2022 which shows that the applicant was diligent, in this respect he cited the case of **Hamisi Mohamed the administrator of the estate of the late Risasi Ngawe vs. Mtumwa Moshi**, Civil Application No. 407/17 2019 (unreported) at Page 9-10. He also referred to **National Housing Corporation and three others vs Ging Lang Li**, Civil Application No.432/ 17 of 2017 where the Court of Appeal of Tanzania, observed that it took a short time when the first application was struck out to the time the subsequent application was filed; hence the application was brought within a reasonable time; the court found this to be sufficient ground. He again referred to **Emmanuel Rurihafi and another vs. Janas Mrema**, Civil Appeal No. 314/2019, Court of Appeal of Tanzania at page 13. He said that, likewise, in this case, the applicant used

only ten days after the application was prepared, signed, and uploaded through the system of this court until the same was uploaded.

Concerning irregularity of the proceedings, Mr. Desidery Ndibalema said that, the applicant is seeking extension of time to file an application for leave for filing an application for prerogative orders against the decision of the president on appeal which was an appeal from the public service commission. The public service commission upheld the decision of the disciplinary committee, which decision terminated the applicant's employment. The applicant has been striving to set aside the decision of the disciplinary committee on the ground that it was tainted with irregularities; for the reason that it was passed by two members. The irregularity has been confirmed by other appellate bodies. It was his submission that the original body was not properly constituted as it was supposed to be chaired by the Regional Commissioner, however he never appeared. He supported his argument by referring to the case of **Principal Secretary Ministry of Defence and National Services vs. Devram Valambhia [1992] TLR 185, and Kalunga Advocate & Co v. NBC Ltd. [2006] TLR 235** which adopted principles which were set in the case of **Transport Equipment LTD vs DP Valambhia [1993] TLR 91.**

In reply, Miss Kause Kilonzo, opposed the application, she responded that the applicant has failed to provide sufficient material to allow the Court to exercise its discretionary powers to grant the application for an extension of time.

She said that, the applicant filed Miscellaneous Cause No. 20/2022 which was struck out for being incompetent on 4/7/2022. The present application was filed on 14/7/2022, ten days later after the first one was struck out.

She submitted that, it is general principle of law that granting an extension of time is Court's discretion but the same need to be exercised judiciously i.e., the same should be exercised according to rules of reason and Justice, and each case is to be treated according to the circumstance surrounding it.

She pointed out that, the Court of Appeal of Tanzania has set some guidelines for the Court to consider when exercising such powers, in this regard, she cited the case of **Lyamuya Construction Ltd vs. The Board of Trustees of Young Women vs. Christian Association of Tanzania**, Civil Application No. 2/2010, at page 6. She argued that, the delay of ten days, from the time when the previous application was struck out, was never

counted for by the applicant in his pleadings before this court. In his affidavit which was filed on 14th July, 2022 and in his reply to counter affidavit, the applicant has not accounted for all the days of delays. She argued that, it is a rule of law that parties are bound by their pleadings, in this regard she referred to the case of **Registered Trustees of the Archdiocese of Dar es salaam vs. The Chairman of Bunju Village Government and others**, Civil Application No. 147/2006, at pages 6 and 7 where the Court said that reasons for extension of time need to be reflected in the affidavit.

She again, cited the case of **Wambele Mtumwa Shahame vs. Mohamed Hamis**, Civil Ref. 8/2016, Court of Appeal of Tanzania, at pages 7, 8, and 9 which stressed the need for accounting for each day of delay. She also, referred to another case of **Yazid Kassim Mbakileki vs. CRDB 1996 Ltd Bukoba Branch & another**, Civil Application No. 412/2004 of 2018, Court of Appeal of Tanzania at page 13, where it was stated that, the court may consider the promptness of applicant in taking action.

Miss. Kause Kilonzo conceded that, illegality is one of the grounds which the Court may extend time, however, the alleged illegality must be apparent on the face of record, to this end, she cited the case of **Lyamuya construction** (supra) on pages 9-10.

In Rejoinder, **Mr. Desidery Ndibalema** contended that, extension of time is court's discretion, and the same should be exercised judiciously. He said that, the present application was filed within ten days subsequent to the striking out of the previous application, this is reasonable time which this Court may consider; he referred to the case of **National Housing** (supra) at page 14.

He argued further that, the case of **Lyamuya** (supra) is quite distinguishable from the present application. He said that, in the case of **Lyamuya** (supra), the Application for Review was dismissed on 7th June 2006, and the applicant filed an application on 26/2/2010, i.e., 4 years after. He clarified that paragraph 28 of the affidavit accounts for a delay of ten days but also where the illegality has been raised the issue of counting each day is not considered at all, in connection to this argument, he referred to the case of **Hamis Mohamed** (supra) para 9. He pointed out that, the issue of irregularities has been raised at paragraph 27 of the affidavit.

He distinguished the case of **Registered Trustees** (supra), he said that, in the cited case, the application was filed 14 months from the date when the suit was dismissed, therefore the decision is not relevant to the present matter. He also argued that, the case of **Wambele Mtumwa**

(supra) is not relevant to the present case for the reason that, in **Wambele Mtumwa** (Supra) the case was dismissed on 21/11/2012, and the applicant filed a subsequent application on 15/10/2013; one year after. He contended that, the case of **Yazid Kassim** (supra) is favoring the applicant as in the present case, the promptness is one of the grounds which may be sufficient for grant of extension of time. He said that, in this case the applicant promptly filed the present application in court within a reasonable time. He explained that, in **Emmanuel's case** (supra), the applicant had filed the application a month later.

He pointed out that, paragraph 27, shows the illegality; in this paragraph it has been clearly stated that the Committee was not properly constituted.

He ended his rejoinder submission by saying that, the reasons for extension of time have been indicated at paragraph 28 of the applicant's affidavit; that after striking out of the former application the applicant was out of time, hence this application.

The court may exercise its discretion to enlarge time limits prescribed by law to institute a case under section 14(1) of **the Law of Limitation Act, [Cap. 89 R.E 2019]**, however, the applicant is duty bound to show

good cause for the delay, depending on the circumstances of each particular case.

The relevant enabling law is section 14. (1) of the Law of Limitation Act, Cap. 89 R.E 2019 (Supra), and it reads thus:

Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the 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

There are no hard and fast rules as to what constitute reasonable or sufficient cause; each case has to be decided on its own circumstances. However, in exercising its discretion, the court has to act judiciously. In the case of **Lyamuya Construction** (Supra) the court of Appeal set some guidelines to be observed, it had the following to say:

"As a matter of general principle, it is the discretion of the court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not

according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated: -

- (a) *The applicant must account for all the period of delay.*
- (b) *The delay should not be inordinate*
- (c) *The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) *If the court feels that there are sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of decision sought to be challenged."*

The issue for determination therefore, as can be gathered from the affidavit, counter affidavit and the submissions is whether the applicant has shown any reasonable or sufficient cause.

Admittedly, paragraph 28 of applicant's affidavit did not account for the dates after the striking out of the previous application to the date of filing the present application. Paragraph 28 reads thus: -

"That, the applicant filed a Misc. Civil Cause No. 20 of 2022 to this court which was struck out on 4th July, 2022 whereby, at the time the same was struck out time to file another application was already lapsed

hence this application. Further that the said application was filed in time but due to legal technicalities the same was struck out and there was no negligence on the part of the applicant."

Obviously, the submission to the fact that, "*they have taken only ten days within which the application was prepared, signed and uploaded through the system of this court*", was not stated in the affidavit, it is mere submission from the bar; the narration is not evidence hence there is no material to support the assertion. This is distinguishable from the cited case of **National Housing Corporation & Others Vs. Ling Lang LI** (Supra) where at page 14, the court reproduced applicant's averments at para 13 of his affidavit which accounted for the delayed days; it is quoted here under:

*"This application has been brought within a reasonably short time from the date of the High court ruling on 15th day of September 2017 and the days between the filing of the application and the ruling **were taken to secure copies of ruling and order the subject matter of this application and securing the admission of the notice of Motion by the registry.**" [Emphasis is mine].*

I, however, have considered the ground of irregularity in the proceeding, this to my considered view, befits grant of the application. The

irregularity has been shown at para 27 of applicant's affidavit, and it reads thus: -

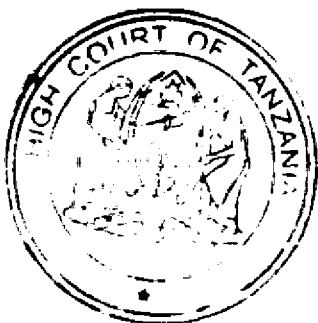
"That it is further stated that the act of terminating the applicant's employment by the disciplinary committee which was not constituted is one of the irregularities as also the report of interview was not signed by the applicant affirmed by the public services commission and lastly upheld by the president is also unjust and....."


That said, I find that the applicant has successfully shown sufficient ground for extending time for filing the intended application.

In fine, the application is granted, and the intended application should be filed within 14 (Fourteen) days.

Each party is to bear its own costs.

It is so ordered.




S.C. MOSHI
JUDGE
21/9/2022.