

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DISTRICT REGISTRY
AT TABORA**

MISCELLANEOUS CIVIL CAUSE NO. 1 OF 2022

**IN THE MATTER OF APPLICATION FOR EXTENSION OF TIME TO FILE
AN APPLICATION FOR LEAVE TO APPLY FOR ORDER OF CERTIORARI
AND**

**IN THE MATTER OF THE POLICE FORCE AND PRISON SERVICE
COMMISSION ACT, CAP. 241 [R.E 2002]**

BETWEEN

EX. P3628 JOHN MICHAEL KISANDU ----- APPLICANT

VERSUS

THE PERMANENT SECRETARY MINISTRY OF

HOME AFFAIRS ----- 1ST RESPONDENT

THE ATTORNEY GENERAL ----- 2ND RESPONDENT

RULING

Date: 26/07/2022 & 23/09/2022

BAHATI SALEMA, J:

The applicant herein named **EX. P3628 John Michael Kisandu** filed this application seeking an order of this Court to enlarge the time within which he may apply for an order of certiorari to remove and quash the decision of the Police Force and Prisons Commission which confirmed the decision of the Ministry of Home Affairs, the decision which dismissed the applicant from employment.

The application was made by way of chamber summons under section 14 of the Law of Limitation Act, Cap. 89 R.E 2019, Section 2(3) of the Judicature and Application of Laws Act, Cap. 358 [R.E 2019] Section 17 (2), 18 (1) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310 [R.E 2019] read together with section 95 of the Civil Procedure Code, Cap. 33 [R.E 2019] supported by an affidavit sworn by EX. P3628 John Michael Kisandu.

A brief history leading to this application goes thus; the applicant was employed as a Prison Officer in the Ministry of Home Affairs. On 25th June, 2014 while working at Uyui Central Prison Tabora he was transferred to Matongo Prison in Bariadi District, Simiyu region.

On 23rd October, 2014 he was charged with a disciplinary offence of disobeying lawful order contrary to Regulation 22 (iv) of the Prison Service Regulation 1997 GN. No. 721 of 1997 and on 1st June, 2016 he was dismissed from employment. He appealed to the Prison and Police Force Service Commission whereby the Commission confirmed his dismissal and later the same was confirmed by the Commissioner General of Prisons.

The applicant is still aggrieved by that decision which is why on 23/02/2022 he lodged this instant application seeking an enlargement of time so that he can apply for leave to apply for an order of Certiorari.

In this application, Mr. Mugaya Kaitila Mtaki senior learned advocate represented the applicant whereas Mr. Lameck Merumba learned Senior State Attorney represented the respondents. The matter was set to be disposed of by way of written submissions, thanks to both parties for complying with the schedule.

Submitting in support of the application Mr. Mtaki stated that, the 1st respondent's decision dismissing the applicant is tainted with illegalities and procedural irregularities whereby the 1st respondent failed to inquire or cause the inquiry proceeding to be conducted as per the requirement of section 7 (6) and 8 of the Police Force and Prison Service Commission Act, Cap. 241 which provides:

"No disciplinary proceedings shall be exercised against police or Prison Officer unless,

(a) A disciplinary charge is preferred against him

(b) An inquiry is held into the charges

(c) He is afforded adequate opportunity to answer the charge

Further section 8 (2) (c) of the same act provides;

(2) the power to dismiss the Police and Prison officer shall not be exercised unless;

(c) an inquiry is held into the charge

Mr. Mtaki's further alleged that the procedure of conducting inquiry set forth under Regulations 33 and 34 of the Prison Service Regulation, GN No. 721 of 1997 was not followed which implies that

the disciplinary authority reached its decision without calling witnesses and collecting evidence to prove or disprove the disciplinary charge against the applicant.

Another illegality that Mr. Mtaki pointed out was that the applicant was denied the basic right of the audience on the disciplinary charge against him. He submitted that the applicant requested the Commission to allow him to be represented by his advocate but surprisingly he later received a letter from the Commission which confirmed an order dismissing him from employment.

Buttressing his argument Mr. Mtaki cited the case of *Edwin William Shetto vs Managing Director of Arusha International Conference Center [1999] TLR 130* where the Court held that:

"Since the plaintiff could only be terminated for good cause, he should have been heard before the decision to terminate him could be taken. The right to be heard is basic and breach of it renders the decision arising from the breach null and void."

For that stated reason, Mr. Mtaki invited this court to grant an extension of time proposing the Court believe that a mere response to the charge does not fully amount to or constitute the right to be heard.

As to the reasons for the delay, Mr. Mtaki further stated that immediately after being dismissed from employment the applicant

faced financial constraints. Referring to the decision of the Court in *Yusufu Same and Another vs Hadija Yusufu, Civil Appeal No. 1 of 2002* where it was held that “*the plea of financial constraint cannot be held to be insignificant*” he invited this Court to consider the ground for extending the time.

On the third ground, Mr. Mtaki stated that the applicant fell into a delay due to a requirement of filing a statutory notice to the Principal Secretary Ministry of Home Affairs. Lastly, Mr. Mtaki prayed the application be granted.

Opposing, Mr. Lameck Merumba resisted the application stating that the decision upon which the extension of time is sought is not attached to the applicant's affidavit further, the Police Force and Prisons Commission had never made any decision confirming the decision of the Minister of Home Affairs in dismissing the applicant; Mr. Merumba contended that the Minister of Home Affairs is not applicant's disciplinary authority under the Police Force and Prisons Service Commission Act, Cap. 241 [R.E 2019].

Mr. Merumba further added that the decision attached to the applicant's affidavit marked as K2 and K4 are decisions of the Permanent Secretary Ministry of Home Affairs which dismissed the applicant from employment and the decision of the Police Force, Immigration and Prisons Service Commission refusing the applicant's appeal.

He informed this Court to note that no decision was ever made by the Police Force and Prisons Commission confirming the decision of the Minister of Home Affairs dismissing the applicant from employment to justify an order for an extension of time.

Moreover, Mr. Merumba submitted that the grounds for consideration as raised in the submission in chief could hold water if the decision of the Permanent Secretary Ministry of Home Affairs was the decision upon which extension of time is sought. Finally, he prayed this Court to strike out the application since there is nothing to quash in absence of the decision of the Minister of Home Affairs alleged by the applicant.

Having heard from both camps, the issue is whether there are sufficient reasons adduced for an extension of time.

It is undisputed that the applicant is out of time in seeking leave to apply for an order of Certiorari. It is a settled position of law that grant of an application for an extension of time is entirely at the discretion of the Court which is to be exercised judicially. Moreover, the Court will apply its discretion in favour of the applicant upon showing good cause.

The first ground tabled by the applicant is based on illegalities and irregularities that appear in the face of the decision intended to be challenged. The question is whether illegality is a sufficient cause to warrant an extension of time. In the famous case of **Principal Secretary, Ministry of Defence and National Service v. Devram**

Valambhia [1999] TLR 182 the Court of Appeal of Tanzania held that illegality is a sufficient cause for granting an extension of time.

Moreover, the same Court in the case of *Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania* (unreported) emphasized that illegality raised must be on point of law which is that of sufficient importance, further, the illegality must be apparent on the face of the record, not one that would be discovered by a long-drawn argument or process.

Upon a thorough perusal of the record attached to this application, and considering the submissions made pro and against the application, although I will not go into the roots that the application is grounded, I am persuaded that the first two points of illegality raised by the applicant are sufficient cause to warrant a grant of extension of time.

That being the position, it is my considered view that the applicant has established good and sufficient cause for this court to grant the application. In the premise, the application is hereby granted.

Order accordingly.

No order as to costs.



A. BAHATI SALEMA
JUDGE
23/09/2022

Ruling delivered under my hand and seal of the Court in the Chamber, this 23rd day of September, 2022 in presence of both parties, via virtual court.



A. BAHATI SALEMA
JUDGE
23/09/2022

Right to Appeal is hereby explained.



A. BAHATI SALEMA
JUDGE
23/09/2022

