

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

**MISCELLANEOUS CAUSE NO. 25 OF 2021**

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

**AND**

**IN THE MATTER OF THE DECISION OF THE TANZANIA  
INSTITUTE OF EDUCATION ON UNLAWFUL TERMINATION OF  
THE APPLICANT**

**BETWEEN**

**PETER LUTASHOBYA BANDIO .....APPLICANT**

**VERSUS**

**TANZANIA INSTITUTE OF EDUCATION.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

**17 & 22 Feb 2022**

**MGETTA, J:**

The two respondents namely Tanzania Institute of Education (the 1<sup>st</sup> respondent) and the Attorney General (the 2<sup>nd</sup> Respondent) herein raised preliminary objection against the application for leave to file an application for orders of certiorari and mandamus to quash the decision made on 18/10/2018 by the 1<sup>st</sup> respondent on unlawful termination of his employment and to compel the 1<sup>st</sup> respondent to reinstate him as a curriculum developer respectively. The application was filed by the applicant namely Peter Lutashobya Bandio, on 16/12/2021 under **section**

**2(3) of the Judicature and Application of Laws Act, Cap 358, section 18(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act Cap 310 and rule 5(1), (2) & (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedures and Fees) Rules of 2014** (henceforth 2014 Rules). The application is supported by the affidavit sworn by the applicant and is also accompanied by a statement.

This ruling is in respect of objections raised by the respondents that:

1. the application is hopelessly time barred because it was preferred beyond six-month time as provided by the law.
2. the application is untenable for seeking leave to challenge the 1st respondent's decision which was appealed against before the Public Service Commission as well before the President whose decision is final and conclusive.

At the hearing of the preliminary objections, Mr. Richard Clement, the learned advocate, appeared for the applicant; while, both respondents enjoyed a legal service of Ms. Jacqueline Kinyasi, the learned State Attorney.

Arguing for the 1<sup>st</sup> preliminary objection, Ms. Jacqueline referred this court to **rule 6 of the 2014 Rules** and averred that the application has been filed out of the law prescribed period of six months. She

elaborated that the impugned decision was delivered by the 1<sup>st</sup> respondent on 18/10/2018 and the instant application was brought on 16/12/2021. To substantiate her argument, she referred this court to the case of **Hezron Nyachiya Versus Tanzania Union of Industrial and Commercial Workers & Another**, Civil Appeal No. 79 of 2001, (CA)(Dar es Salaam) (unreported) at page 3-4.

In respect of the 2<sup>nd</sup> preliminary objection, she submitted that the applicant was employed by the 1<sup>st</sup> respondent. Upon termination of his employment, he appealed to the Public Service Commission as provided by the law. He further appealed to the President of the United Republic Tanzania whose decision is final, against the decision of the Public Service Commission. She had a view therefore that the applicant ought to have challenged the president's decision which was final and conclusive and not that of the 1<sup>st</sup> respondent. Her argument was supported by the case of **Pendo Masasi Versus the Minister for Labour and Youth Development & Two Others**, Civil Appeal No. 34 of 2019, (CA) (Mwanza)(unreported) at page 11 whereby the Court explained the chain of the decisions ought to be challenged.

Responding to the 1<sup>st</sup> preliminary objection, Mr. Richard submitted that the applicant being a public servant was required to exhaust all local remedies upon the termination of his employment by the 1<sup>st</sup> respondent

on 18/10/2018. He appealed to the Public Service Commission which by its letter dated 20/4/2020, dismissed his appeal. He further appealed to the President. The President's decision was given on 23/7/2021 upholding the decision of the 1<sup>st</sup> respondent. Therefore, according to him, time to apply for leave started to accrue from 23/7/2021 the date of President's decision. Hence, he stated, this application was filed within time.

As regard to the 2<sup>nd</sup> preliminary objection, he stated that the illegality started from the decision of the 1<sup>st</sup> respondent up to that of the President. He referred this court to **section 37 of Act No.6 of 2020** which amended **section 18 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, CAP 310** by adding section 18 A to insist that the Attorney General is a necessary party to this application. He added that the application is intended to challenge the decision from the 1<sup>st</sup> respondent, the Public Service Commission up to that of the President. He therefore prayed the preliminary objections be dismissed.

In a rejoinder, Ms. Jacqueline insisted that it is a cardinal principle that parties are bound by their own pleadings. That the Chamber application of the applicant shows that he is intending to challenge the decision of the 1<sup>st</sup> respondent only. That in the applicant's prayer, there is nowhere he has expressed his intention that he intended as well to challenge the decision of the Public Service Commission and that of the

President. That such submission just came from the bar which is a total misconception and unacceptable in law, she added.

Having heard from the counsel of both parties and in connection to the foregoing, I had a glance on the applicant's prayers. It is on the record that if a leave is granted to him, the applicant intends to challenge the decision of the 1<sup>st</sup> respondent. To be precise, I quote from his chamber summons that:

- 1. That, this Honourable Court be pleased to grant leave to the Applicant to apply for prerogative order of CERTIORARI to quash the decision of the 1<sup>st</sup> Respondent on unlawful termination of the Applicant.*
- 2. That this Honourable Court be pleased to grant leave to the Applicant to apply for prerogative order of MANDAMUS compelling the 1<sup>st</sup> Respondent to reinstate the Applicant as a Curriculum Developer.*

Now the 1<sup>st</sup> respondent made the impugned decision on 18/10/2018. Ms. Jacqueline prayed that the six month period has to be counted from that date. Counting from that date obviously the applicant is late to file an application for leave. The law provides and I quote **rule 6 of 2014 Rules** that:

*“6. The leave to apply for judicial review shall not be granted unless the application for leave is made within six months after the date of the proceedings, act or omission to which the application for leave relates”.*

Considering the applicant’s Chamber Summons, the applicant’s prayers are limited to the decision dated 18/10/2018 that was made by the 1<sup>st</sup> respondent. Therefore, referring to the quoted provision of the law above, this court has to start counting the six month period, as rightly argued by Ms. Jacqueline, from the date the impugned decision was made by the 1<sup>st</sup> respondent, i.e. 18/10/2018, and not counting from 23/7/2021, when the President made a decision in the exercise of her appellate jurisdiction.

Furthermore, a look at the pleadings, after all, the applicant is not intending to challenge the President’s decision, although Mr. Richard when submitting has tried on his level best to state that the illegality of the impugned decision is traceable right from the decision of the 1<sup>st</sup> respondent to the decision of the President.

In the same vein, I am in agreement with Ms. Jacqueline that parties are bound by their pleadings. In this application, the Chamber summons, statement and affidavit all concerns with the decision of the 1<sup>st</sup> respondent only and not the Public Service Commission or the President’s decision.

Thus, the applicant is bound by them. The Court of Appeal in the case of **Peter Koranti & 48 others Versus The Attorney General & others;** Civil Appeal No. 3 of 1988 (CA )(unreported), aptly stated that:

*"... It is trite law that the parties to a suit are bound by their pleadings"*

Likewise, in the case of **Makori Wassaga Versus Joshua Mwaikambo & Another** [1987] TLR 88, the Court of Appeal said;

*"A party is bound by his pleadings and can only succeed according to what he has averred in his plaint and proved evidence in evidence; hence he is not allowed to set up a new case"*

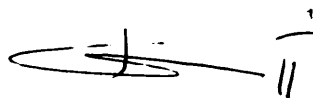
I have examined the records of this application and taken into consideration of the contending submissions of the parties. I have found that the applicant is not intending and more precise categorically stated in the pleadings that he intended also to challenge the decisions of other appellate authorities. Such conclusion has been drawn being aware that the applicant had spent time while exhausting other available remedies as required by law. However, nothing much can be said as other disciplinary authorities were not joined in this matter, drawing an inference that the Applicant was satisfied with their decisions.

The findings of the 1<sup>st</sup> preliminary objection suffices to completely dissolve this application. I don't see a need of going discussing the last preliminary objection.

Having said so I find the 1st preliminary objection with merit that the application is hopelessly time barred as it was preferred after the expiry of six months period. I do accordingly sustain the objection and this application is accordingly dismissed. In the circumstances of this application, I order each party to bear its own costs.

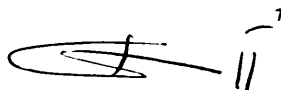
It is so ordered.

**Dated at Dar es Salaam** this 22<sup>nd</sup> day of February, 2022.



**J. S. MGETTA  
JUDGE**

**COURT:** This ruling is delivered today this 22<sup>nd</sup> February, 2022 in the presence of Mr. Richard Clement, the learned advocate for the applicant and in the presence of Mr. Thomas Mahushi, the learned State Attorney for respondents.



**J.S.MGETTA  
JUDGE  
22/02/2022**