

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

MISCELLANEOUS CIVIL APPLICATION NO.18 OF 2021

DICKSON WILSON.....APPLICANT

VERSUS

INSTITUTE OF TAX ADMINISTRATION1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

21 & 29 April, 2022

MGETTA, J:

Through Mr. Cleophance James, the learned advocate the applicant, Mr. Dickson Wilson filed a chamber summons under certificate of urgency seeking for an order extending time within which he could file an application for leave to apply for judicial review. The chamber application is made under **section 14 (1) of The Law of Limitation Act** (henceforth Cap.89).

The application is supported by the affidavit sworn by the applicant; and, it is strongly opposed by the counter affidavit sworn by Ms. Jane Mgayya, the learned State Attorney.

The applicant alleges that he was a student at the 1st respondent pursuing Bachelor of Custom and Tax Management. He was accused by the 1st respondent that on 15/10/2020, he left the examination room with an examination booklet without permission from the invigilator, the

conduct which amounted to cheating as per Examination Regulation. As a result, he was discontinued from his studies by the 1st respondent on 27/4/2021. He discovered that the discontinuation is clouded with illegality. He was therefore aggrieved by such discontinuation and when he decided to impugn that decision by way of judicial review before this court, he found himself late. Hence this application for extension of time.

The applicant alleges that the delay to file an application for leave was not caused by negligence, but rather by sickness as since October, 2020, he was attending hematology clinics. He started feeling pains, dizziness and general body weakness since 05/10/2021 as a result of normocytic normochromic anemia. He was advised by medical practitioner to have light duties for at least three months at the same time attending clinic on several times. This allegation is contained in paragraph 10 of his affidavit. However, it was discovered to be false allegation that required substantiation by the applicant. Mr. Ayoub, the state attorney urged this court to call the deponent, the applicant so that he can be cross examined on the said contents of the affidavit. The court tried to summon him to procure his attendance for cross examination, but in vain. However, it was found that the attendance of the applicant before this court cannot be procured without undue delay as his advocate did not state out where exactly his client was.

Even in his submission, Mr. Cleophance did not submit on applicant's sickness. Stead, he pegged his submission on the ground that the decision of the 1st respondent discontinuing the applicant from studies was tainted with illegality as the applicant was not given the right to be heard. That right to be heard which is very fundamental was violated by the decision of the 1st respondent and the applicant intended to challenge such decision. That there was no formal charge laid against him specifying the regulation alleged to have been violated. That he was denied the right to file written statement of defense prior to his appearing to the disciplinary committee. According to him, the alleged illegality in the decision of the 1st respondent constitutes a sufficient ground for extension of time. However, he observed that, extension of time is a discretion of the court to grant or refuse but the same has to be exercised judiciously by looking at the length of the delay, the reason of the delay degree of prejudice to the other party when time is extended, and whether there is an arguable case.

Mr. Ayoub on his part, he adopted the counter affidavit of Ms. Jane Mgaya. He submitted that this court should determine first two issues. **One**, whether there is a valid affidavit before this court to warrant this application. According to him, annexure to the affidavit is forged hospital chit which renders the whole applicant's affidavit untenable. As stated

elsewhere herein, the applicant was summoned to come in court to substantiate his allegation through cross examination, but he never appeared. Thus, according to him, the affidavit containing such false information must be dismissed and the application will remain unsupported. He referred to the case of **Ignazio Messina Versus William Investments SPRL**; Civil Application No. 21 of 2001 (CA) (DSM) (unreported) at page 4 in which the Court of Appeal observed that false information cannot be relied upon to resolve any issue.

Two, whether there is a sufficient reason to warrant the grant of extension of time. He submitted that there is no sufficient reason for extension of time; and, furthermore, the principle of illegality is not apparent on the face of the records as was insisted in the case of **Lyamuya Construction Co. Ltd Versus Board of Registered trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (CA) (Arusha). That the allegation that the applicant was denied right to be heard is a fallacy as he was given a letter explaining his charges and was given time to reply the same. He submitted that the applicant was well informed. He urged this court not to act upon the affidavit that contains lies. He prayed this application be dismissed as it is supported by defective affidavit.

It is a trite law that an application for extension of time is entirely on the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the ***delay was with the sufficient/good cause as*** per section 14(1) of CAP 89. See the case of **Tanzania Breweries Ltd Versus Leo Kobelo**; Civil Application 64 of 2020, (CA) (12 March 2021) reported in www.tanzlii.org.tz.

It is on record that the impugned decision was made on 27/4/2021, but this application was filed on 24/11/2021. The application for leave to file Judicial Review was supposed to be filed within six (6) months from date of delivering the impugned decision, that is on or before 27/10/ 2021. He did not account for those days. He just asserted that he was attending to medication, the facts which turned to be false as he never came for cross examination. In the case of **Jaliya Felix Rutaihwa Versus Kalokora Bwasha & Another**; Civil Application No. 392/01 of 2020 (CA) (DSM), it was stated that false facts or lies cannot be relied upon by this court. This court subscribes that view as the applicant was unable to attend before this court to be cross examined on the said facts. Even his advocate was hesitant for his client to be called and cross examined. Therefore, this court drew an inference against the applicant on that fact.

In the case of **Lyamuya Constraction Co. Ltd** (supra) at page 6, the Court of Appeal outlined the following principles that:

- 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..."*

Spinning on the quotation above, the applicant has not satisfied the prerequisite condition for this court to exercise its discretion. However, one paragraph of the applicant's being illegal cannot detain this court to ascertain on other grounds of this application. It is evident that the applicant was told the charge he was facing that is cheating as per Examination Regulations by leaving the examination room with the examination booklet without the permission of invigilator. Further, he was availed his right to defend himself before the examination Irregularity Committee. Therefore, the applicant herein was granted his right to be heard. Thus, in the circumstances of this application, illegality cannot be sufficient ground for extension of time.

From the above findings, I must conclude that this application has no merit as the applicants has failed to illustrate good cause to persuade

this court to grant him extension of time. Therefore, the application is dismissed. No order as to costs.

It is so ordered.

Dated at Dar es Salaam this 29th day of April, 2022.



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**J.S. MGETTA
JUDGE**

COURT: This ruling is delivered today this 29th day of April, 2022 in the presence of Mr. Cleophance James, the learned advocate for the applicant and in the presence of Mr. Ayoub Sanga, the learned State Attorney for the respondents.



A handwritten signature in blue ink, appearing to be "J.S. MGETTA", followed by two vertical lines.

**J.S. MGETTA
JUDGE
29/4/2022**