

IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 08 of 2023

FRAISIKA RUGIMBANA KUBEBEKA APPLICANT

VERSUS

THE CHIEF SECRETARY PRESIDENT'S OFFICE .. 1ST RESPONDENT

THE PUBLIC SERVICE COMMISSION 2ND RESPONDENT

THE KINONDONI MUNICIPAL COUNCIL 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

RULING

02nd May & 18th May, 2023

M.M. SIYANI, J.K.

Before me lays an application for extension of time within which to apply for leave to file an application for judicial review brought by the Fraisika Rugimbana Kubebeke (the applicant). The chamber application taken at the instance of Endo & Company Advocates, has been preferred under section 14 (1) of the Law of Limitation Act CAP 89 R.E. 2019 (the Act) and section 95 of the Civil Procedure Code CAP 33 R.E. 2019 (the Code) and

is supported by the applicant's affidavit. In the chamber summons the applicant prays for the following:

1. *"That, this Honourable Court be pleased to grant an order for extension of time within which the Applicant can file an application for leave to file an application for judicial review.*
2. *That, Costs of this application to be provided for.*
3. *Any other relief(s) that the Court may deem fit to grant."*

Through her Affidavit, the applicant states that the decision against which she ultimately wishes to challenge through judicial review was delivered on 25th July, 2022; posted to her on 12th August, 2022 and received by her on 22nd November, 2022. Not satisfied with that decision she decided to look for an advocate for legal assistance but was not able to procure such services due to financial constraints until sometime in the end of February, 2023. The rest of the applicant's averments are as seen in the records.

The Respondents filed a collective Counter Affidavit sworn by Selina Kapange, Senior State Attorney. In their Counter Affidavit the

Respondents *inter alia* averred that other than there being no evidence of the applicant financial constraints, the said financial constraints are not a by itself, a sufficient ground for extension of time. It was further stated that the applicant has neither accounted for the period of delay nor stated her efforts for the efficient prosecution of her case; and therefore claimed that the applicant has not advanced sufficient reasons for an order of extension of time to issue.

When the application came for hearing Ms. Eliaichi Ndowo and Ms. Selina Kapange entered appearance for the applicant and respondents respectively and the matter proceeded through oral hearing. Ms. Ndowo adopted the contents of the applicant's Affidavit as part of their submission.

She submitted that the applicant received the 1st respondent's decision on 22nd November, 2022. Aggrieved by it she decided to challenge the same but could not do so timely because she had no finance to hire a lawyer as a result of being unemployed. She submitted that by the time the applicant received the 1st respondent's decision the advocates were also approaching the end of year court vacation consequently the applicant successfully engaged an advocate by the end of February, 2023. For these

two reasons Ms. Ndowo argued that reasons for the delay were beyond the control of the applicant and that the delay was not inordinate since the 6 months within which the applicant ought to have commenced the leave proceedings, lapsed on 25th January, 2023.

To support her argument Ms. Ndowo cited the case of **Tanga Cement Co. Ltd Vs Jumanne D. Masangwa & Another** [2004] TZCA 45 referred in the case of **Elipokea Ngoe Vs Katarina Kavei**, Misc. Land Application 95 of 2021 [2022] TZHC 10256 where the Court observed that what amounts to sufficient cause has not been defined but that the applicant ought to act diligently, that delay should not be inordinate and that the difficulty in raising fund for hiring an advocate as a sufficient cause. Ms. Ndowo argued that she believes financial difficulties and end of the year vacations to be sufficient cause. Also, she argued that it took 3 months for the decision to be delivered to the applicant but the applicant has delayed in filing the matter for only one month. At the sum Ms. Ndowo prayed for an order of extension of time to issue with costs on those grounds and arguments.

In response Ms. Kapange adopted the contents of the Counter Affidavit as part of their submission and argued that in an application for extension

of time an applicant must account for delay and show sufficient cause. She argued that financial difficulties are not a sufficient cause to warrant extension of time and that since the applicant's case was a labour matter, she ought to have filed it without fee. To buttress her argument Ms. Kapange cited the cases of **Wambele Mtumwa Shahame Vs Mohamed Hamis** [2018] TZCA 39 and **Yusuf Same Vs Hadija Yusuf** [2002] TZCA 1 where at page 11 of the former case the Court of Appeal of Tanzania concluded that financial constraints is not sufficient reason for extension of time.

Ms. Kapange further argued that the applicant ought to account for each day of delay. Thus, if the decision which aggrieved the applicant was delivered on 25th July, 2020 and communicated to her on 22nd November, 2020 then she ought to have commenced leave proceedings on or by 25th January, 2023 but the applicant preferred the current application on 10th March, 2023, 44 days from 25th January, 2023. It is her position that the financial constraints so alleged do not account for the period between end of February, 2023 to 10th March, 2023.

In support of her arguments Ms. Kapange cited the cases of **Bushfire Hassan Vs Latina Lucia Masanya** Civil Application No. 03 of 2007

(Unreported) and **Lyamuya Construction Company Limited Vs Board of Registered Trustee of Young Women's Christian Association of Tanzania** [2011] TZCA 4 where the Court of Appeal held that delay of even a single day has to be accounted for. She argued that the applicant had failed to account for her delay, had not indicated any problem (illegality) in the 1st respondent's decision and prayed that the application be dismissed.

In her rejoinder Ms. Ndowo reiterated her stance in her submission in chief, argued to have advanced good reason; accounted for each day of delay; the applicant having acted promptly in filing the instant application different from the situation in **Wambele Mtumwa's** case and prayed that the application be granted.

After the foregoing dispassionate review of the pleadings, submission, annexures and authorities submitted, I find it wise to digest the law pertaining to the application before as cited. Section 95 of the Code, on the illimitation of this Court's power for the ends of justice or to prevent abuse of court process, need not detain me because section 14 (1) of the Act specifically provides the precepts for this application 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."*

(Emphasis is mine)

Both counsels have advanced arguments to address the emphasized rule and it has been clearly pointed out that for the applicant to succeed reasonable or sufficient cause must be shown. There is no hard and fast rule which delimits what amounts to reasonable or sufficient cause but the same is within the discretion of the Court so to rule as the circumstances warrant in a judicious manner.

The Court of Appeal has in multiple instances given meaning to the letter of the law in this regard prioritizing reason and justice over private opinions and among many such instances the **Lyamuya Construction Company Limited's** case is instructive. There in the Court of Appeal pointed out guidelines for an order of extension of time to issue as follows:

- i. The applicant must account for all the period of delay;*
- ii. The delay should not be inordinate;*

- iii. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and;*
- iv. If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

From this backdrop this Court has to examine the grounds and arguments advanced to see if they tally with the above guidelines for an order of extension of time to issue. In accounting for the period of delay, the applicant points to financial constraints and end of year court vacation as reasons why she could not afford to procure legal services for forward action on her discontentment. She admittedly had knowledge of such decision as of 22nd November, 2022, was to commence leave proceedings on or by 25th January, 2023 but filed the current application on 10th March, 2023.

As pointed out by Ms. Kapange in the respondents Counter Affidavit, no evidence to prove either reason was provided and it is her argument that financial constraints is not sufficient cause for delay. It is apparent in the record that the applicant produced no evidence to prove neither financial

constraints nor the end of year court vacation. With the latter reason I fail to see the congruence between the end of year court vacation, which in 2022 I take judicial notice of it having been between 15th December, 2022 and 31st January, 2023, and the applicant's failure to procure legal services. Further, court vacations do not inhibit commencement of proceedings. This reason fails to account for the period of 23 days between 22nd November, 2022 and 15th December 2022 when the end of year court vacation commenced and the subsequent period thereafter.

With the former reason, other than the Court not having been provided with evidence to prove that financial constraints on the applicant were of such a nature to disable her from proceeding timely, such a ground has generally been opined not to be a reasonable, good or sufficient cause for delay. Moreover, no reason or evidence which made legal services a prerequisite to the applicant's action was advanced. In my considered opinion the applicant's unemployment, though indicative, is not proof of financial constraints and like the Court of Appeal's conclusion in **Wambele Mtumwa's** and **Yusufu Same's** cases financial constraints is not sufficient cause for delay.

I am aware that in **Elipokea Ngoe's** case, this court (B.K. Philip, J) while taking a leaf from **Yusufu Same's** case, observed that financial constraints were sufficient cause. However, I believe the circumstances in those two cases are distinguishable. While in **Yusufu Same's** case which was a basis for a decision in **Elipokea Ngoe**, the respondent was a widow and depended on legal aid, in the present case the marital status of the applicant is neither pleaded nor argued and there are no indications of her being a legal aid recipient. I find the marital status of the applicant to be vital, because that was a departing point from the position of the Court in **Yusufu Same's** case, that financial constraint is not sufficient ground for extension of time except where the applicant was a widow and depended on legal aid. See also **Zabitis Kawuka Vs. Abdul Karim** (EACA) Civil Appeal No. 18 of 1937.

With the foregoing I find that the reasons advanced by the applicant do not account for the delay in preferring leave proceedings as there was a period of 64 between when she got notice of the decision against her and the closure of the window within which she was to act against it if she wanted to. Since the 44 days between 25th January, 2023 and 10th March, 2023 have not been sufficiently accounted for, I accordingly find there to have been inordinate delay in the prosecution of the applicant

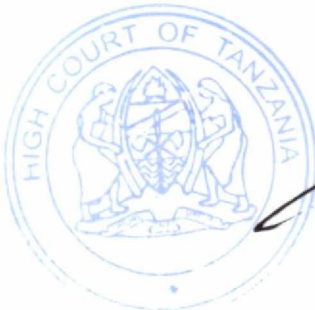
discontentment. Like in **Lyamuya's** case where a 25 days unaccounted delay was inescapable, the 44 days unaccounted delay in this matter call into question the applicant's diligence and not to a favorable conclusion.

As I conclude, illegality of the 1st respondent's decision against the applicant apparent on the record might have been the saving grace and a hook for an order of extension of time to hang. But as pointed out by Ms. Kapange in her submission, with no objection from Ms. Ndowo, no problem in that decision or illegality was pleaded. I accordingly find no ground for extension of time on the basis of illegality.

In the upshot and on the foregoing analysis I find that no reasonable or sufficient cause was proved. As such this Application fails for want of merit and it is accordingly dismissed. Owing to the nature of the Application, no order as to costs is issued.

It is so ordered.

DATED at DAR ES SALAAM this 18th Day of May, 2023



M.M. SIYANI

JK