

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISC.CIVIL APPLICATION NO. 41 OF 2023

HILDA ADO CHARLE..... APPLICANT

VERSUS

THE PERMANENT SECRETARY

MINISTRY OF DEFENCE AND NATIONAL SERVICE.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

29th November & 13th December, 2023

KAGOMBA, J

The Applicant, HILDA ADO CHARLE, seeks to be granted extension of time to file an application for leave to enable her apply for judicial review. She also prays for costs of the application and any other relief which this court shall deem fit, just, and equitable to grant.

The application is by way of a chamber summons made under section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019] and sections 93 & 95 of the Civil Procedure Code, [Cap 33 R.E 2019]. The same is supported by an affidavit sworn by herself. Since the applicant is a lay person who was unrepresented, much of her case is stated in the said affidavit from which the background and grounds of this application can be drawn.

In the sworn affidavit, the applicant depones that she was an employee of the Tanzania People Defence Force (TPDF) since 1998, serving at 521 KJ – LUGALO. It is her further averment that on 15th September 2005 she was orally terminated from employment on account of mental illness. She states however, that a psychiatric assessment revealed that she had no sign of mental illness, save for some personality behaviour changes as opined by a social worker.

The applicant further avers that she wrote letters to the Chief of Defence Forces – Headquarters, in multiple times, to challenge the impugned termination but in vain. Finally, she wrote another letter to the 1st respondent who sustained the termination decision. Being aggrieved, she appealed to the Minister for Defence and National Service, again, in vain. Her file was reportedly closed by the 1st respondent on the ground that her claims were concluded and her termination cannot be reversed because of that illness.

According to the applicant's affidavit, following the closure of her file, she eventually landed in this court to challenge the termination by way of judicial review vide Misc. Cause No. 43 of 2023 which was, however, withdrawn for want of prior extension of time. According to her, the period of 18 years since her termination has been spent in making efforts to exhaust

local remedies before resorting to the court of law. She therefore argues that, the delay is not caused by negligence on her part.

Through a counter affidavit sworn by one Luteni Mustafa Hamisi Mnumbe, the respondents vehemently deny the applicant's averments. It is stated in the counter affidavit that the applicant was called to the office of the Commanding Officer and was informed of her termination, which she signed to acknowledge as per the Defence Forces Regulations, Volume 1.

It is further deponed in the counter affidavit that the termination followed proper procedures, including referral to the Medical Board of TPDF.

In a document titled; *"Additional Answers Against with Oath of 13/11/2023 that Given to Hilda Ado Chale"* (sic), which may be construed, for its intent and purpose, as a reply to the counter affidavit, the applicant vehemently denies to have signed the said acknowledgement of her termination. For this reason, she prays the court to disregard the respondents' counter affidavit.

During hearing, the applicant who appeared in person, prayed the court to adopt her affidavit and the so-called additional answers. She added that the delay in applying for leave was caused by the reason that she was not furnished with the termination letter and that she had no a lawyer to assist her with legal processes.

Ms. Jesca Shengena, learned Principal State Attorney appeared for the respondents. She prayed the court to adopt the counter affidavit filed by the respondents. Capitalizing on the applicant's own admission in paragraph 12 of her affidavit of her 18 year-delay, Ms. Shengena argued that in terms of rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees), Rules, GN No. 324 of 2014, the applicant's application for leave should have been filed within six months from the date of the impugned decision but was not.

Citing the case of **Elias Mwakalinga v. Domina Kagaruki and 5 Others**, Civil Application 120/12 of 2018 which was quoted in the decision of this court in **Damari Watson Bijinga v. Innocent Sangan**, Misc. Civil Application No. 30 of 2021, she mentions the criteria to be considered for extension of time, namely; the length of the delay and the reasons thereof.

Also, the learned Principal State Attorney cited the decision of the Court of Appeal in the case of **Lyamuya Construction Co. Limited v. Boards of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, for the contention that the applicant is obliged to account for each day of delay.

Regarding applicant's lack of legal assistance, learned Attorney replied that that was a new fact which is not averred in the applicant's affidavit.

Finally, Ms. Shengena prayed the court to dismiss the application for lacking sufficient cause to justify the granting of time extension.

On rejoinder, the applicant reiterated her submission in chief. She was emphatic that she was never issued with the termination letter until this year, 2023 when she was issued with the letters from the Minister and the 1st respondent. She also bemoaned her lack of legal representation, save for the legal assistance she received from the Legal and Human Right Centre in preparation of her pleadings. That is all from the rival submissions.

In determining this application, the first point of call is the provision of section 14 of the Law of Limitation Act [Cap 89 R.E 2019] from which the court may derive its powers to extend time. The section provides;

*"14.-(1) 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."*

In light of the submissions made by the parties and the position of the law above quoted, the issue for determination is whether the applicant has adduced reasonable or sufficient cause for the application to be granted.

As to what constitutes reasonable or sufficient cause, there is no one definition that suits all situations and circumstances. However, there are guiding criteria established by the Court of Appeal in the famous case of **Lyamuya Construction Co. Limited** (supra) to be considered in determining applications for extension of time. **One**; the applicant shall account for all the period of delay. **Two**; the delay shall not be inordinate; **Three**; the applicant shall show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he or she intends to take and, **four**; 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. Also, to be considered, according to other authorities, is the length of delay and its reasons.

Further to the above criteria, it is settled position of the law that the reasons for extension of time should be stated in an affidavit of the applicant and not in the submission as clarified in the case of **The Registered Trustees of the Archdiocese of Dar es salaam v. The Chairman Bunju Village Government and Others**, Civil Appeal No. 147 of 2006, CAT, Dar es salaam, where it was held that;

"Since, as correctly submitted by Mr. Mhango, an affidavit is evidence we think it was expected that reasons for the

delay would be reflected in the affidavit. In the absence of reasons, it occurs to us that there was no material evidence upon which the judge could determine on merit the application before him."

In the instant application, the applicant states in her affidavit that she was orally terminated from her employment with the TPDF on 15th September 2005. She advances three main reasons for the delay which should also to justify the granting of time extension. Her reasons for delay in filing her application for leave are; **Firstly**, she was not served with termination letter. **Secondly**; she spent the 18-year period trying to exhaust domestic remedies, and **thirdly**, she had no legal representation to help her out of the legal wrangles involved.

As regards the first reason, the applicant's affidavit doesn't show how non-service of the termination letter delayed the filing of her leave application in time. There is nothing in the affidavit to show that the applicant spent the 18-year period making follow up on the termination letter so as to file her application for leave. She didn't even demand to be availed with the said letter in the first place.

In my considered view, the termination letter would have been the bedrock of the applicant's claims of rights, if any, from the date she reported back in office on 26th January, 2006 going forward. Paragraph 4 of the

affidavit confirms lack of efforts to obtain the termination letter. Her affidavit states in paragraph 4 as follows:

*"4. That, since I was not served with the termination letter I had to go to the human resource to ask for my salary and that's when I was told to seek clarification about my status from Lt.Z.M Pakiamu, the reply I got shocked me therefore, **I had to write a letter on 29th august 2005 requesting for medical check up** to prove that I was mentally fit and of sound mind."* [Emphasis added].

Nowhere in the cited paragraph, and indeed in the entire affidavit, the applicant shows the effort she took to obtain her termination letter. Hence, she cannot be heard alleging that she was delayed to file her application for leave on account of making follow ups on the termination letter. The affidavit simply doesn't support this claim.

In a decision of this court in Miscellaneous Civil Application No. 06 of 2023 between **Omar Shaaban S. Nyambu v. The Chief of Defence Forces & 2Others**, which is almost identical to this instant application, the applicant therein managed to prove to the court that he persistently pressed his employer to avail him with termination letter for as long as it took. In so doing, he even wrote reminders to his employer on the subject. This fact distinguishes these, otherwise, identical applications.

It is evident from the applicant's affidavit that upon realizing that she was not served with the termination letter, the applicant decided to proceed to ask for her salary instead of seeking to be served with the termination letter or a copy thereof. The service of the said letter to the applicant was significant not only as a legally-required procedure for terminating a formal employment, but also for informing the applicant the official reasons for the termination and above all to confirm to her if at all she was terminated. Unfortunately, the applicant misspent her efforts and time on matters which were non-starter. It is rather strange that the applicant spent much of her time challenging the termination without even seeing the termination letter in the first place.

As for her second reason for the delay, the applicant states in paragraph 12 of the affidavit that she spent all the period of 18 years since her termination trying to exhaust local remedies. This again, is not sufficiently reasoned in the affidavit. First and foremost, it is not clear which local forum and remedies the applicant was trying to exhaust. All what can be seen is a haphazard communication with various authorities, including the Prime Minister. I think, it was imperative for the applicant to clearly state which forums, according to her employment hierarchy, were the next points of appeal and whether she chronologically followed them exhaustively. There

are legal consequences for non-exhaustion of the established dispute settlement fora concerned.

In **Salim O. Kobora vs TANESCO Ltd and 2 Others**, Civil Appeal No. 55 of 2014, CAT, Dar es salaam, the Court of Appeal had guided that;

"where a certain law provides for a specific forum to first deal with a certain dispute, a resort to it first is imperative before one seeks recourse to court. Where that is not observed, the attendant court's decision is rendered a nullity."

In the bundle of letters written and received by the applicant, the court cannot determine with any degree of certainty if the local remedies which the applicant alleges to exhaust for the 18-year period were actually exhausted. Afterall, it is mindboggling to conceive the idea of exhaustion of local remedies without obtaining the termination letter to know its contents.

Besides, there are contradictions and inconsistencies in the affidavit as to the sequence of events and some material particulars. For example, the applicant states that she went to ask for her salary whereupon she was shocked by the reply that was given to her. She wrote a letter on 29th August, 2005 (sic) requesting for medical checkup as per annexure M3. Surprisingly, while the request for medical check appears to be a reaction to the shocking

response given to the applicant when she asked for her salary on duty on 26th January, 2006, the letter requesting for medical checkup (annexure M3) is actually dated 29th August, 2005, which means she requested for medical checkup even before she was terminated on 15th September, 2005.

It is further averred that on 30th March, 2006 she started challenging her termination by writing to Chief of Defence Forces. Her ground for challenging the termination was that “no medical report was referred before the termination”. This averment rises doubt as to how could the applicant know if there was no reference to a medical report while she didn’t have the termination letter in the first place?

Most glaringly is the fact that the applicant has failed to account for all the period of delay from 15th September 2005 when she was terminated to 24th October 2023 when she instituted her application in court. She has not been able to show how the good 18 years were lost in delay. Accounting for each day of delay is a legal requirement as per the decision in **Lyamuya’s case** (supra).

On the third reason, the applicant insinuates that lack of legal assistance contributed to her misery. However, as correctly argued by Ms. Shengena, this last claim is not stated anywhere in the applicant’s affidavit. As such, the same is disregarded for not being part of the evidence availed

to this court. In this application, the evidence to support the applicant's prayers can only be obtained from the sworn affidavit filed in court.

In the above premises, it is the finding of this court that no reasonable or sufficient cause has been shown by the applicant to catalyze the court's discretion to grant time extension for the applicant to apply for leave to file an application for judicial review. Thus, the sole issue herein is answered in the negative.

In the end, the application is dismissed for lacking in merit. However, considering that this dispute emanates from employment relationship, I make no order as to costs.

Dated at Dodoma this 13th day of December, 2023.




ABDI S. KAGOMBA

JUDGE