

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY
AT MWANZA**

MISC. CIVIL APPLICATION NO. 12 OF 2023

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

BETWEEN

F. 3329 CPL BURERWA LEONARD MAGAYANE 1ST APPLICANT

F. 8892 PC IMAN MTEGA ABIHADI 2ND APPLICANT

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

20/5/2024 & 14/6/2024

ROBERT, J:

The applicants, F.3329 CPL Buberwa Leonard Magayane and F.8892 PC Iman Mtega Abihadi, seek leave to file an application for judicial review to compel the 1st respondent, Inspector General of Police (IGP), to provide them with a copy of the charge, proceedings, and decision of the Regional Police Commander (RPC) dated 21st March, 2017. The application is supported by a joint affidavit sworn by the applicants.

The applicants initially applied for prerogative orders of certiorari and mandamus against the orders of the Regional Police Commander, the Inspector General of Police, and the Minister for Home Affairs in Misc. Civil

Cause No. 12 of 2019, after obtaining prerequisite leave in Misc. Civil Cause No. 7 of 2019. However, the High Court dismissed the application for incompetence. Dissatisfied, the applicants appealed to the Court of Appeal of Tanzania in Civil Appeal No. 119 of 2020. On 11th July, 2023, the Court of Appeal nullified both rulings in Misc. Civil Cause No. 7 of 2019 and Misc. Civil Cause No. 12 of 2019 and granted the applicants 90 days to apply for leave to seek an order of mandamus to compel the IGP to provide the decision of the RPC.

Following the Court of Appeal decision, the applicants filed this application on 10th October 2024, but the respondents raised a preliminary objection on the point of law, arguing that the application is unmaintainable as it is out of time.

When this application came up for hearing, the applicants were represented by Mr. Erick Tumaini, learned counsel whereas Ms. Subira Mwandambo, Senior State Attorney represented the respondents. At the request of parties, hearing proceeded by way of written submissions.

Submitting in support of the preliminary objection, counsel for the respondents argued that this application is out of time as it was filed one day after the 90-day period stipulated by the Court of Appeal. He cited Section 3(1) of the Law of Limitation Act [Cap. 89 R.E 2019], which mandates that any proceedings filed out of time shall be dismissed. He

referred the Court to the case of **Hezron M. Nyachiya v. Tanzania Union of Industrial and Commercial Workers & Another**, Civil Appeal No. 79/2001, where the Court observed that, the purpose of a preliminary objection is to save the time of the Court and of the parties by not going into the merit of an application because there is a point of law that will dispose the matter summarily.

He also relied on **Jubilee Insurance Company (T) Limited v. Mohamed Sameer Khan**, Civil Application No. 439/01/2020, emphasizing that even a single day's delay must be accounted for. He maintained that the applicant failed to account for the delay and prayed for this application to be dismissed.

In response, the counsel for the applicants acknowledged the delay but argued that it was not due to negligence. He asserted that the applicants made multiple attempts to obtain the necessary documents and faced technical difficulties with electronic filing, ultimately filing the application on 10th October 2023. He made reference to the case of **Mechmar Corporation (Malaysia) Berhad v. VIP Engineering and Marketing Ltd**, Civil Application No. 9 of 2011, to argue that exceptional circumstances warrant the extension of time. He also cited the case of **Abraham Abraham Simama v. Bahati Sanga**, Civil Application No.

462/17 of 2020, highlighting the court's discretion to extend time based on the circumstances of each case.

The applicants also raised a concern that the Notice of Preliminary Objection filed by the respondents stated that the application was time-barred under Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, G.N No. 324 of 2014, read together with Sections 3(1) and 46 of the Law of Limitation Act. However, the respondents did not argue this in their submissions and instead raised new issues without explaining why they abandoned the initial objection. The applicants contend that the incorrect citation rendered the notice incompetent.

The crux of the matter is whether the delay of one day in filing the application can be excused in the absence of a formal application for an extension of time. The Court of Appeal's decision granted the applicants 90 days from 11th July, 2023, thus expiring on 9th October 2023. The application was filed on 10th October 2023, making it one day late.

Section 3(1) of the Law of Limitation Act [Cap 89 R.E 2019] explicitly states that any proceeding filed out of time must be dismissed. The applicants have not filed a separate application for extension of time before filing the current application. This procedural misstep cannot be

overlooked, as the court's jurisdiction to entertain a matter filed out of time without an extension is non-existent.

The cases cited by the applicants, such as **Mechmar Corporation and Abraham Abraham Simama (supra)**, support the principle that the court can extend time in exceptional circumstances. However, these precedents require a formal application for an extension of time to be made and granted before the substantive application can be entertained.

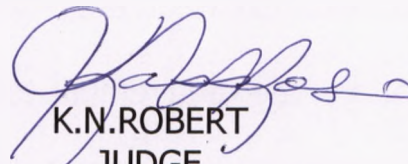
Without a proper application for an extension of time, the court cannot exercise its discretion to extend the time retrospectively within the context of this application. The requirement to apply for an extension of time is a procedural necessity that safeguards the legal process's integrity and ensures that all parties adhere to established legal timelines.

Regarding the applicants' concern about the point raised in the notice of preliminary objection, it is noted that the respondents did not argue the original point regarding Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules in their submissions. Instead, they focused on the application being time-barred based on the 90 days leave granted to the applicants by the Court of Appeal. Despite this procedural irregularity, the critical issue of the application's timeliness remains relevant, as it directly affects the court's jurisdiction in this matter.

Given the above analysis, the preliminary objection raised by the respondents is upheld. The application is out of time, and no formal application for an extension of time was made. Consequently, this application is incompetent before this court. That said, the application is dismissed for being filed out of time.

It is so ordered.




K.N. ROBERT
JUDGE
14/6/2024