IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

DAR ES SALAAM

MISCELLANEOUS CAUSE NO. 335 OF 2019

BETWEEN

DAUDI JOHN MPOLE ..... APPLICANT

VERSUS

CHIEF SECRETARY PRESIDENT OFFICE ..... 1ST RESPONDENT

THE ATTORNEY GENERAL ..... 2ND RESPONDENT

RULING

Date of Last Order: 03/05/2021

Date of Judgement: 27/05/2021

Aboud, J.

The applicant, prays for this Court to grant him leave to file an application for mandamus to forbear the first respondent from unlawful terminating him from the employment. The applicant also prays for leave to file an application for certiorari to quash the whole decision of the Chief Secretary of the Honourable President of the United Republic of Tanzania, the Permanent Secretary of the Public Service Commission and the Rector of East African Statistical Training Centre. The application is made under section 2(1) of the Judicature and application of Laws Act, Chapter 358 of the Laws of Tanzania. Section 94 (1) (d) of Employment and Labour Relations Act (Cap 366

RE. 2018). Section 51 of the Labour Institutions Act (Cap. 300 RE. 2018), Rule 24 (1) (2) (a), (b), (c), (d) and (f) and (3) (a), (b), (c) and (d) and 28 (1) (a), (b), (c), (d) and (e) of the Labour Court Rules GN. No. 106/2007 read together with Sections 17 (2), 19 (1)(2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provision) Act, Chapter 310 of the Laws of Tanzania and Rule 5 (1) and (2) (a), (b), (c), (d), (3) and (6) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review and Fees Rules, 2014).

The applicant invited the Court to determine the following issues:-

(i) Whether the facts contained in the affidavit if true would constitute a reasonable ground for grant of the order of mandamus and certiorari.

(ii) Whether the applicant has the sufficient interest in the matter to which the intended application relates.

(iii) Whether on the facts the application will raise an arguable prima facie.

(iv) Whether the applicant has not been guilty of dilatoriness.

(v) Whether there is no other speedy and effective remedy available to the applicant.

The matter was argued orally and the applicant was represented by Mr. David Andindilile, Learned Counsel.

Arguing in support of the application Mr. David Andindilile adopted the applicant's affidavit to form part of his submission. On the first issue he submitted that, the applicant contends that was not summoned at the Inquiry Committee before his termination. He stated that, although there are some letters suggesting that the applicant was summoned but there was no evidence of proof of service of the same.

As to the second issue it was submitted that, the applicant is the one who was terminated from employment. Regarding the third issue it was submitted that, the respondent argument was to the effect that the applicant was summoned, the fact which is not true because some of the documents were forged.

On the fourth issue it was submitted that, the applicant is not guilty of dilatoriness because the present matter was filed on time despite the fact that there were some struck out by the Court.

On the last issue it was submitted that, since there was finality clause in Regulation 60 (5) of the Public Service Regulation, GN. 168

of 2003 then such provision shuts out all other remedies. To strengthen his submission the Learned Counsel referred the Court to the case of **Edwards V. Bairstow** (1995) All ER page 481 and the case of **The Commissioner General (TRA) V. Mohamed Al-Salim & another**, Civ. Appl. No. 80 of 2018. He therefore prayed for the application to be allowed.

Having considered the applicant's submission, court records as well as relevant applicable laws and practice I find the issue for determination is whether the applicant had sufficient grounds to be granted the order sought.

The requirement to obtain leave to file an application for judicial review is provided under Rule 5 (1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 (herein referred as Judicial Review Rules) which provides as follows:-

> *'Rule 5 (1) An application for judicial review shall not be made unless a leave to file such application has been granted by the Court in accordance with these rule'.*

The time limit for filing an application for judicial review is six (6) months as it is a legal requirement provided under Rule 6 of the Judicial Review Rules, which is to the following effect:-

> *'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'.*

In this application the decision of the Chief Secretary President's Office which the applicant want this court to intervene was delivered on 09/05/2017 and on 11/05/2017 the same was sent to the applicant's postal address. The applicant claimed not to have received the same and, on 01/06/2017 the decision was re-sent to him as reflected in Annexture AA4.

At paragraph 3 sub para xii of his affidavit, the applicant stated that, he filed his application for leave on 18/10/2018, for easy of reference I hereunder quote the relevant paragraph of the applicant's affidavit:-

> *'Paragraph 3 (xii) - That, on 18th October, 2018 the applicant filed an application for leave to file application for prerogative orders, the application which was struck out and the*

applicant was granted 14 days to file proper application. The copy of the order of the court is hereby attached and marked annexture AA5 for which leave of your honourable court is craved for the same to form part of this affidavit'.

As stated above the time limit for filing an application for judicial review is six (6) months. In this application the impugned decision was delivered on 09/05/2017 and the applicant's first application for leave was filed on 18/10/2018 which was almost one year and five months from the date of the decision. Under the circumstances, it is my view that the applicant's application for leave to apply for judicial review was filed out of time.

I fully agree with the applicant's Counsel submission that the matter have been struck out in court for several times, however, such would have been a good ground if the first application was filed timely. To the contrary, that is not the position because the first application for leave before the matter was struck out was filed out of time. In other words the application at hand was field out of time from the beginning.

It has been decided in a number of cases that a court cannot determine a time barred application unless a party has applied for an extension of time to file time barred application. In this matter there is no record that the applicant applied for extension of time before he filed his timely barred application at hand. Therefore, this matter cannot be entertained because is time barred. This was also the position in the case of **PC Julius Mkamwa V. Inspector General of Police & another**, Misc. Civ. Appl. No. 308 of 2003 where it was held that:-

> *'In brief, as the applicant's application for leave has been filed hopelessly out of time, and as the orders of certiorari and mandamus cannot be issued in such cases, I hereby dismiss it'.*

In the result, as it is found that the application at hand was filed out of time without leave of the court, it is hereby dismissed in its entirely.

It is so ordered.

I.D. Aboud
JUDGE
27/05/2021