IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 1418 OF 2024

IN THE MATTER FOR APPLICATION FOR EXTENSION OF TIME FOR APPLICATION FOR JUDICIAL REVIEW TO APPLY FOR ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION AGAINST THE RESPONDENTS

AND

IN THE MATTER OF CHALLENGING THE DECISION OF THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA IN HER APPELLATE AUTHORITY FOR CONFIRMING THE DECISION OF THE PUBLIC SERVICE COMMISSION WHICH CONFIRMED THE DECISION OF THE SIHA DISTRICT COUNCIL WHICH RESULTED IN DISMISSAL OF THE APPLICANT FROM EMPLOYMENT

BETWEEN

PERE MUGANDA ..... APPLICANT

VERSUS

THE CHIEF SECRETARY ..... 1ST RESPONDENT

SIHA DISTRICT COUNCIL ..... 2ND RESPONDENT

THE ATTORNEY GENERAL ..... 3RD RESPONDENT

RULING

Date of last order: 26/03/2024

Date of Ruling: 03/04/2024

Matuma, J.

The applicant was an accountant employed by the second Respondent herein but was dismissed from his employment for disciplinary issues. After

his efforts to challenge the dismissal through administrative channels had ended in vain, he resorted back to court for judicial review. He obtained leave for such purpose and timely instituted the judicial review application which however ended on technical grounds (preliminary issues) on 30/11/2023.

His application having been struck out on such date, the applicant was already out of time to reinstitute a new application and could not immediately lodge this application for extension of time until on 23/12/2023. In this application which is made under section 14 of the Law of Limitations Act, the applicant seeks extension of time to file afresh an application for judicial review to challenge his dismissal from employment.

At the hearing of this application, the applicant was represented by Mr. Isack Tasinga learned advocate while the respondents were jointly represented by Mr. Ayoub Sanga and Mr. Mathew Fuko learned State Attorneys.

Both counsels had no problem with the period spent by the applicant to prosecute the incompetent application as being the period of technical delay. They however contested for the delay of 23 days counting from the date when the incompetent application was struck out on 30/11/2023 to 23/12/2023 when this application was lodged in court.

To justify such delay, Mr. Tasinga learned advocate for the applicant argued that after the struck out of the application for judicial review, the applicant struggled to get the ruling without success until 19/12/2023 when he got it from Tanzlii after having been so instructed by judicial officers. That after getting the ruling the applicant promptly filed this application for extension

of time on 23/12/2023 which was only four days' time. The learned advocate finalized his argument by stating that granting this application won't affect the rights of the respondents and prayed that the same be granted.

In reply against this application, Mr. Ayoub Sanga argued that the 23 days delay has not been accounted for because the ruling which the applicant alleges to have waited until when he was instructed to download it from Tanzlii was uploaded on Tanzlii on the same date it was delivered.

The learned State Attorney further submitted that there is no letter showing that the applicant really requested for the copy of ruling nor has filed the affidavit of the officer to whom the follow up was made. To that effect the learned state attorney cited the case of ***Octavian Rugerezi Francis versus Teachers Service Commission and 2 Others, Civil Appeal No 220 of 2023*** and ***Sabena Technics Dar Limited versus Michael J. Luwunzu, Civil Application No 451/18 of 2020***.

As an alternative argument, the learned state attorney argued that in any case it was not necessary for the copy of the ruling striking out the application to be attached in the instant application for extension of time hence the applicant was not required to spend his time waiting for the copy of such ruling. He thus prayed that this application be dismissed with costs.

In rejoinder, Mr. Tasinga argued that the applicant so does normal citizens are normally going to court verbally and be replied verbally, and that court officers are trusted on their instructions and normal citizen act upon such instructions and therefore it could not have been easy for the applicant to obtain the requisite affidavit.

Having gone through the affidavits and submissions of both learned counsels, I find that this application deserves to be granted. This is because the ruling striking out the applicant's application was important document to be attached to the instant application because it was necessary for justification of the delay for the whole period which the applicant spent in prosecuting the incompetent application. In the absence of such ruling the applicant could have not sufficiently justified the technical delay which has been conceded by the respondents. I therefore disagree with Mr. Sanga that such ruling was not necessary for the applicant to attach in this application.

The only remaining issue to resolve is whether the applicant requested for the ruling immediately after its delivery and whether he made the requisite follow ups to obtain the same. According to the applicant's affidavit, he requested such ruling verbally and made follow ups verbally for almost 19 days before he was instructed to obtain it from Tanzlii. The respondents are arguing that there ought to be attachments of documentary evidence showing such follow ups or else the arguments remain mere words in the applicant's affidavit.

While I agree with the learned state attorneys that paper evidence is important, I disagree that it is always necessary. It would depend on the facts of each case. In this case the delay was only 23 days. This in my view was the shortest period that could not alert the applicant's mind that he had to start creation of documentary evidence and keep the same for future purposes.

It presupposes that his averments in the affidavit that he was verbally making follow ups is true. In fact, the practice acknowledges both verbal and

written follow ups. It would depend on the intellect of the litigant. Normal citizens as it was put by Mr. Tasinga learned advocate would always make oral requests and be obliged to oral directives by judicial officers. That would be different if the matter is being handled by advocates. Advocates are normally communicating in writing. In that respect I have no good reason to doubt the applicant's explanations regarding the follow ups he made to obtain the ruling in question.

On the issue that the ruling was uploaded on Tanzlii on the same date of its delivery and that the applicant could have got it on the same date, I find that such argument is irrelevant. Currently, we still have the Chief Justice's secular no. 1 of 2023 requiring the litigants to be supplied with the rulings, judgments and proceedings. This secular has not been repealed by the presence of the judicial website (Tanzlii). Therefore, while the litigants are argued to visit Tanzlii to download the decisions required, the court still have legal obligation to supply the parties with the decisions until when the herein above-named secular will be repealed with directives that judicial decisions shall only be obtained from Tanzlii.

In the case of ***Ms Henry Leonard Maeda and Another versus Ms John Anaeli Mongi & Another, Civil Application No 31 of 2013,*** the court of appeal quoting the case of ***Henry Muyaga v. Tanzania Telecommunication Company Ltd, Civil Application No. 8 of 2011*** held that in considering an application of this nature, courts may take into consideration, such factors as; the length of the delay, the reason for the delay, the chance of success of the intended appeal, and the degree of prejudice that the respondent may suffer if the application is granted.

In the circumstances of this case, I have considered that the applicant applied for leave immediately after exhausting administrative channels, lodged his application for judicial review within time after having obtained leave and did not stay for long time to lodge this application. I find no any prejudice to the respondents in case this application is granted. Rather I find it that, it is the applicant who will suffer for having been denied access to try fighting for his innocence and employment while he has shown diligence and efforts to struggle for the same.

I therefore grant this application and extend the applicant fourteen days from the date of this ruling within which he has to refile afresh his application for judicial review. No orders as to costs.

It is so ordered.

MATUMA

JUDGE

03/04/2024

Court; Ruling delivered in chambers in the presence of Mr. Boaz Msoffe learned State Attorney for the Respondents and in the presence of Mr. Dickson Sabato legal officer of TASS ATTORNEYS for the Applicant

MATUMA

JUDGE

03/04/2024