

IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 9 OF 2021

ISAYA JOSEPH CHAWINGA.....APPLICANT

VERSUS

THE COMMISSIONER GENERAL OF

IMMIGRATION SERVICES.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

**(Application for extension of time within which to file
application for judicial review out of time)**

RULING

28 Oct & 10 Nov, 2021

MGETTA, J:

After obtaining a permission of this court, the applicant one Isaya Joseph Chawinga, on 17/2/2021 lodged a chamber summons applying for the order of certiorari to quash the decision of the 1st respondent, the Commissioner General of Immigration Services; and, for the order of mandamus to compel the 2nd respondent, the Attorney General to reinstate him into his public service position without loss of entitlements. As provided under **rule 8 (1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules 2014**, the application for judicial review should be supported by an

affidavit and the statement. His application was not supported by statement; and, for that reason it was struck out on 25/8/2021.

Anxious to pursue his application again, the applicant could not have straightforward come to this court applying for judicial review without applying for and obtaining an extension of time first. He therefore lodged this application under **sections 14 and 19 of the Law of Limitation Act, Cap. 89** seeking for extension of time within which to refile an application for judicial review. It is therefore the application for extension of time which is the subject matter of this ruling.

When the application was called on for hearing, Mr. Emmanuel Anthony, the learned advocate appeared for the applicant; while, both respondents enjoyed a legal service of Ms. Rehema Mtulya and Mr. Urso Luoga, both learned state attorneys in the presence of Mr. Salum O. Salum, the 1st respondent's legal officer.

Mr. Emmanuel submitted that if at all there was a delay to file the application for judicial review, that delay should be counted starting from 23/2/2021 the day the leave of 14 days given to do so, had come at end. Now, counting from 23/2/2021 up to 31/8/2021 the date the application for extension of time was physically filed is equal to 189 days. However, he

added that before the expiring of the leave given, the applicant had lodged an application for judicial review on 17/2/2021. From that date (17/2/2021), the matter was within this court while thinking that such matter was properly filed. He came to know that the application was improperly filed and therefore incompetent when it was struck out on 25/8/2021. Thus, between 23/2/2021 up to 25/8/2021 when the application was staying in this court, is equal to 183 days. Therefore, Mr. Emmanuel submitted that the applicant was able to account for all those days when the application was in this court pending determination.

He submitted further that the applicant spent two days to apply and obtain the ruling. After he had obtained it, he submitted the same to him (the counsel). He then promptly prepared this application which was physically filed on 31/8/2021. According to him, Mr. Emmanuel submitted, his client, the applicant has also successfully accounted for the two days he spent in looking and finally obtained a copy of the ruling. He was not idle. He was busy so that his right could be pursued. To support his submission, he cited to me the case of **Vodacom Tanzania Public Limited Company versus Commissioner General Tanzania Revenue Authority**; Civil Application No. 101/20 of 2021 (CA) (Dodoma) (unreported). He concluded

by emphasizing that for 183 days the application for judicial review was pending in court until it was struck out; and, two days later were spent by applicant to look and obtain the ruling which was subsequently sent to him for drafting the necessary papers in regard to the application for extension of time. Hence, he submitted, the applicant has successfully accounted for the days that made him delay.

In reply, Ms Rehema who adopted the counter affidavit as part of her submission, submitted that the applicant had failed to show sufficient cause warranting the grant of extension of time. She shifted the blame to applicant's advocate who was negligent for preparing a chamber application for judicial review without attaching the statement; hence the application was struck out for being incompetent before this court due to advocate's negligence. She asserted further that he ought to know the requirement of the law in filing his client's application for judicial review. She supported her argument by citing to me the case of **Wankira Benteel versus Kaiku Foya**; Civil Reference No. 4 of 2000 (CA) (DSM) (unreported) where the court of appeal stated and I quote that:

"therefore if at all there was any mistake then the blame was upon the applicant's counsel, and such mistakes do

not constitute sufficient reason for extending time except where it is of no fundamental nature”

Thus, she submitted that in this application it was negligence of the applicant’s advocate who failed to file the documents as per the law requirement. As a result, the application was struck out. She submitted that **section 14 of Cap. 89** says that in order the application for extension of time to be granted, the applicant should show sufficient reasons for delay to the satisfaction of the court.

She insisted in this application not only the applicant has failed to give sufficient reasons but also has failed to account for each day of delay. She supported her argument by citing the case of **Lyamuya Construction Company Limited Versus Board of Registered Trustees of Young Women’s Christin Association of Tanzania**; Civil Application No. 2 of 2020 (CA) (Arusha) (unreported) at pages 6 – 7, where it was held that the applicant must account for each day of delay.

She submitted further that it is the court’s discretion whether to grant or refuse to grant the extension¹ of time, but she insisted that discretion should not overrule justice and procedure. She referred me to page 10 last paragraph of Wankira case (supra) insisting that after the leave was granted,

the applicant's advocate was supposed to comply with the procedure. He failed to do so then the application for judicial review was struck out. Advocate's negligence is not sufficient reason to extend the time. She finally prayed that the application be dismissed with costs.

From the submission of both parties, it is not in dispute that earlier on the applicant had filed an application for judicial review within the period prescribed by the law. It was however struck out due to the reason that the applicant failed to attach the statement to his chamber application as the law requires. It was struck out after it has stayed before this court for 183 days. Mr. Emanuel submitted that that was a technical delay as they could do nothing, but rather to wait until the court determine the preliminary objection raised by respondents. When the application was struck out, the applicant spent some two days to obtain the ruling which was finally handled over to him. Upon receipt of the ruling, he promptly prepared this application for extension of time and filed the same electronically on 27/8/2021, but the physical documents were received by this court on 31/8/2021. In the circumstances, I would say the applicant had accounted for days of delay. Therefore, I find it not prudent to shift advocate's insufficient legal knowledge to the applicant. After all, his advocate had filed the application

for judicial review within time just soon after the leave to do so was granted. The applicant became aware of the incompetence of his application when it was struck out. He promptly took action of collecting the ruling and handled it over to his advocate who within two working days, prepared and filed this application. I am of the view that the advocate was prompt for preparing and filing the current application for extension of time within two working period upon receipt of the necessary documents from the applicant.

As far as the cases cited to me by the state attorney are concerned, I am inclined to Mr. Emmaneul's submission that they are distinguishable from this application. In those two cases as correctly submitted by Mr. Eammanuel there was no court process. In the present, there isn't. It was in Lyamuya case (supra) where the principle of accounting for day delayed was lay down. In the present application, for 183 days the application for judicial review was pending before the court; and, the delay when the applicant was obtaining the ruling and the time of preparing and filing the present application is not inordinate. The record shows that this court handed down the ruling on 25/8/2021. On 27/8/2021, his advocate filed the application electronically. On 28/8/2021 was Saturday; and on 29/8/2021, Sunday. Physical documents were submitted before this court on 31/8/2021. Actually,

I find that in the circumstances, the applicant has accounted for each day of delay which of course I accordingly hold to be not inordinate.

In the premises, I find that the applicant has advanced good and sufficient reasons which require me to exercise discretionary power to extend time to him within which to file application for judicial review. He is therefore given fourteen (14) days from today to lodge his application. I order each party to bear its own costs.

It is so ordered.

Dated at Dar es Salaam this 10th day of November, 2021.



A handwritten signature in blue ink, appearing to read "J.S. MGETTA".

J.S. MGETTA
JUDGE

COURT: This ruling is delivered today this 10th November, 2021 in the presence of the applicant in person and in the presence of Ms Rehema Mtulya, the learned state attorney for the respondents.

A handwritten signature in blue ink, appearing to read "J.S. MGETTA".

J.S. MGETTA
JUDGE
10/11/2021