

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 264 of 2021

MUKIZA NAPHTALI ARTHUR.....APPLICANT

versus

KYAMBOGO UNIVERSITY.....RESPONDENT

BEFORE: HON. JUSTICE SEKAANA MUSA

RULING

The applicant filed an application by way of Notice of Motion under Articles 28,42,44 & 50 of the Constitution of the Republic of Uganda, Sections 33,36 and 38 of the Judicature Act cap.13, Section 98 of the Civil procedure Act & rules 3,3A,4,5(1),6 and 8 of the Judicature(Judicial Review) Rules seeking for;

1. Time be enlarged within which to file an application for Judicial review
2. An order of certiorari doth issue quashing the decision of the Respondent's Staff Tribunal in Appeal Case No.05 of 2020 dated 16th April 2021
3. An order of prohibition doth issue against the Respondents, its agents and or servants from further implementing the said decision and or advertising or recruiting anyone to fill in the position of the applicant. In the alternative an order be issued directing the respondent to pay all employment benefits of the applicant.
4. A permanent injunction doth issue restraining the Respondents, their agents and or Servants from implementing the said decision

5. A further order for compensation of the applicant by way of aggravated and general damages be issued against the Respondent.

6. Interest on c & e above plus costs of this application be granted to the applicant.

The grounds upon which this application is based are contained in the affidavit of the applicant Mukiza Naphtali Arthur but briefly are;

1. On the 19th April 2021, the applicant was served through his lawyers of Okurut, Okalebo, Outeke and co. Advocates with a ruling of the respondent's Staff Tribunal dated 16th April 2021 in Appeal Case No.05 of 2020 where the applicant had challenged the decision of the Respondent's appointment Board.

2. By the time of service of the ruling, the applicant was unwell and couldn't lodge an appeal or application for judicial review within the prescribed time.

3. Thereafter, the President of the Republic of Uganda issued several measures and guidelines for the prevention and control of covid 19 that made it impractical to file an appeal by way of judicial Review.

4. The Respondent's staff tribunal and that of the appointments board dismissing the applicant from serving as administrative assistant.

5. Both decisions of the Respondent's staff tribunal and that of the appointments Board were arrived at illegally, irregularly and unfairly there by occasioning a miscarriage of justice to the applicant.

6. That it is just, equitable and proper for this Honorable court to allow this application and grant all the remedies herein sought.

The respondent opposed the application and filed an affidavit in reply, deposed by Arthur Katongole as the Secretary for Kyambogo University. The Respondents vehemently in opposition stated that the applicant is not entitled to any of orders sought.

That the applicant's application is tainted with so many illegalities and falsehoods to be granted and if granted, the Respondent shall be highly prejudiced and inconvenienced.

The applicant was represented by *Odongoi Simon Peter*, whereas and *Cyrus Baguma* represented the respondent.

The court directed the parties to file their written submissions which were duly filed and have been considered by this court in determination of this application.

ISSUES

- 1. Whether the respondent's affidavit in reply is competent?***
- 2. Whether the application discloses any good reason for court to enlarge time within which to file an application for judicial review?***
- 3. Whether the application raises any grounds for judicial review***
- 4. What remedies are available to the applicant?***

DETERMINATION

Whether the respondent's affidavit in reply is competent

Counsel for the applicant submitted that the rules of procedure applicable to filing and service equally apply to affidavits in reply; this can be seen under 0.8 r 1(2) of the civil procedure rules.

The applicant's counsel further asserts that the affidavit in reply was filed on 20th October 2021 beyond the 15 days and without leave of courts as required by law, it should be noted that the timelines applicable to plaints and written statement of defenses also apply to interlocutory applications.

The respondent's counsel in their affidavit in reply assert the time frames for filing written statement of defense do not apply to interlocutory applications this was stated in **misc. Civil cause No.007 of 2016, Article 126(2)(e) of the 1995 constitution of the Republic of Uganda** as amended enjoins court to administer

substantive justice without undue regard to technicalities, this however doesn't mean that court shouldn't have regard to technicalities.

Analysis

In the instant case Counsel for the applicant argued that the rules of procedure applicable to filing and service equally apply to affidavits in reply and that the Respondents filed their affidavit out of time. However counsel for the Respondent contended that time frames for filing written statement of defense do not apply to interlocutory applications. I entirely agree with the same submission, and further add that the Judicature (Judicial Review) Rules provides for special timelines and therefore the rules on pleadings are not applicable to judicial review application.

Rule 7(3) provides as follows;

Any respondent who intends to use any affidavit at the hearing shall file it with the Registrar of the High Court as soon as practicable and in any event, unless the court otherwise directs, within fifty six days after service upon the respondent of the documents.

The affidavit in reply was competently filed in court.

Whether the application discloses any good reason for court to enlarge time within which to file an application for judicial review?

The applicants counsel submitted that under **Section 57(3), of the Universities and other Tertiary Institutions Act, 2001 as amended**, a member of staff aggrieved by the decision of the tribunal may within 30 days from the date he or she is notified of the tribunal's decision apply to the high court for judicial review

The applicants counsel stated that in the case of **Uganda cleaning industry and authority forwarding association vs. Kampala capital city and Attorney General, HCMC No.439 of 2017** a copy of which is attached as case 4, this court held that court has discretion to extend the period within to bring an application for judicial review for good reason and that such discretion must be judicious and based on good reasons and this depends on the circumstances of a given case.

Rule 5 of the Judicature judicial review rules S.I NO.11 of 2009 permits court for good reason to extend the period within which application for judicial review shall be made.

Counsel for the applicant his Submissions in rejoinder contended that the respondent did not adduce any evidence to contradict that produced by the applicant confirming the ill health of the applicant, applicants counsel further states that, had the respondent invited the applicant to receive the decision of the tribunal on 16th april in 2021 in accordance with regulation 33.2 of the staff tribunal regulations, which was not done in this case, the applicant would have known his right to make this application promptly.

It should be noted that Rule 5 Judicature review rules is not couched in mandatory terms and gives court discretionary powers to consider time for extension of time that makes courts discretionary powers for enlargement are unfettered, the applicants counsel aver in there submissions that they failed to file the application in time due to ill health and subsequent lockdown measures, in **the case of Nampogo Robert & Anor vs. Attorney General HCMC No.0120 of 2008** states that there's allowance under the said rule for court to exercise a discretion in favor of an applicant, where court considers that there's a good reason for extending the period within which the application shall be made, the applicants can't be denied there right to judicial review due to a mere technicalities, furthermore the applicants have demonstrated sufficient cause for enlargement of time and file the application for judicial review.

The respondents counsel state in there submissions that the applicant was not incapacitated from filing the application as he avers and that he was restricted by covid 19, the respondents counsel further states in the submissions that it is highly doubtful that the applicant fell sick on the 19th April 2021 as is stated on annexure C.

Analysis.

Under Rule 5 (1) of the Judicature (Judicial Review) Rules 2009 provides that;

*(1) An application for judicial review shall be made promptly and in any event **within three months from the date when the grounds of the application FIRST arose**, unless the court considers that there is good reason for extending the period within which the application shall be made.*

Secondly, **Section 57(3), of the Universities and other Tertiary Institutions Act, 2001 as amended**, a member of staff aggrieved by the decision of the tribunal may within 30 days from the date he or she is notified of the tribunal's decision apply to the high court for judicial review

It is clear that the applicant was out of time by the time of filing the application for judicial review. However, he contends that he was given a bed rest for 30 days on the 19th day of April 2021.

The applicant either inadvertently or ignorantly did not seek leave of court to extend the time within which such an application can be brought and opted to seek leave within the same application which is irregular although sometimes it may be granted at the discretion of the court.

The reasons advanced for the delayed filing should have been advanced at the time of applying for leave to extend the time of filing for judicial review. The rule of laches is not a rigid rule which can be cast in a strait-jacket. The courts do not follow a rigid, but a flexible, measure of delay. It should be emphasized that the rule that the court may not enquire into belated and stale claims is not applied in a rigid manner.

This court does not agree with the submissions of the applicant's counsel that time limits are technicalities and should be dispensed with. In the case of ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd CACA 31 of 2000***; The court of Appeal noted that; Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.

The timeline for application for Judicial review in this case are strictly provided for under the Universities and Other tertiary Institutions Act. This means that this time cannot be extended by court since it is set under a statute: *'once statute barred always statute barred'*. Where a specific statute provides for timelines, the general Statute or Statutory instrument cannot be applied like in this case.

The court ought not to consider stale claims by persons who have slept on their rights. Any application brought under the Constitution or by way of judicial review could not be entertained if presented after lapse of a period fixed by limitation legislation.

If the applicant wanted to invoke the jurisdiction of this court they should have come at the earliest reasonably possible opportunity or sought leave of the court to file their application out of time but not to file the same as of right after expiry of the time set by law.

Inordinate delay in making an application for judicial review will always be a good ground for refusing to exercise such discretionary jurisdiction of this court to entertain the application. The court refuses relief to an applicant on ground of laches because of several considerations e.g it is not desirable to allow stale claims to be canvassed before the court; there should be finality to litigation.

Excessive interference by the judiciary in the functions of the Executive is not proper. The machinery of government would not work if it were not allowed some free play in its joints. A staff tribunal is established under the law to resolve University issues in relation to staff with some special representation and expertise on university disputes like falsification of examination results.

The nature of the allegations leveled against the applicant (Altering examination results) was serious and ought not to have been taken lightly. That level of importance should have been reflected in the expediency in filing an application for judicial review within 30 days as provided in the statute, if at all the applicant was seriously aggrieved by the decision of the Staff Tribunal.

The applicant's counsel was invited to receive the decision on 16th April 2021 and this was before the applicant got his alleged bed rest. It was the duty of counsel to advise the applicant that time was of essence in lodging an application in time. There is no explanation given by counsel for the applicant for the alleged delay apart from alluding to the decision not being signed by all the members. That was dilatory conduct on part of counsel and this court would not have exercised its discretion even if the timelines had not been embedded in the Universities and Other Tertiary Institutions Act.

This application is dismissed with costs for being filed out of the statutory period of 30 days.

I so order

SSEKAANA MUSA.

JUDGE

14th October 2022