THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 0040 OF 2019

IN THE MATTER OF ARTICLE 42 OF THE CONSTITUTION OF THE REPUBLIC OF UGANDA 1995

AND

IN THE MATTER OF SECTIONS 36 AND 38 OF THE JUDICATURE ACT CAP 13 (AS AMENDED)

AND

IN THE MATTER OF THE JUDICATURE (JUDICIAL REVIEW RULES), SI NO. 11 OF 2009

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY DAWSON KADOPE

DAWSON KADOPE :: APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY (URA) :::::::::::::::: RESPONDENT

BEFORE: HON MR. JUSTICE BASHAIJA K. ANDREW

RULING:

Dawson Kadope *(hereinafter referred to the "Applicant")* brought this application under judicial review against Uganda Revenue Authority *(hereinafter referred to the "Respondent")* under Rules 3 and 7 of the Judicature (Judicial Review) Rules SI Ni.11 of 2009; seeking a writ

of certiorari to issue quashing the Respondent's decision to terminate the Applicant's employment; a declaration that the Applicant's dismissal was wrongful, unfair and unlawful; that the Respondent's continued non-payment of the Applicant's terminal benefits amounts to a continuous illegal and cruel, inhuman and degrading treatment contrary to Article 24 of the Constitution; a writ of mandamus compelling the Respondent to pay the Applicant all accruing emoluments including, but not limited to gratuity; compensation in lieu of notice of termination; severance allowance; repatriation allowance and others incidental thereto; general and exemplary damage and costs of the suit.

Background:

On 03/11/1998, the Applicant was employed in the Respondent's service at the level of Office Messenger. He rose through the ranks to the rank of Officer II, and on 01/10/2017 he was transferred to Entebbe office as Officer Service Management. On 12/01/2017 the Respondent's Commissioner Internal Audit & Compliance asked the Assistant Commissioner Human Resource to summon the Applicant to appear for a compliance interview on 18/01/2017 on allegations of forgery of a log book for motor vehicle Reg. No. UAX 399X by the

Respondent's staff. The Applicant appeared before the Human Resource Manager and made a statement regarding the allegations.

On 03/05/2018, the Applicant was invited to appear before the Management Disciplinary Committee of the Respondent on account of alleged fraud, dishonesty and flaunting of processes and procedures in relation to log book details for the said motor vehicle. The Applicant was alleged to have committed *Offence No. 35 and 27 of the New Offences Schedule 2014 as amended*, of the Respondent.

On 11/05/2018, the Management Disciplinary Committee considered the Applicant's disciplinary case and made the decision to terminate his services from the Respondent for having committed the offence stated above. The termination was effective from 17/05/2018, pursuant to *Section 11.3.2 (h) of the Human Resource Manual of 2012* of the Respondent.

Upon receipt of a formal letter of termination on 29/5/2018, the Applicant formally appealed against the decision to the Staff Appeals Committee. However, on 17/07/2018, the Staff Appeals Committee in its deliberations on the matter and after considering the Applicant's submissions, found no merit in the reasons advanced and upheld the decision to terminate the Applicant. The

Respondent contends that the Applicant's terminal benefits were computed and paid to him on 07/02/2019, although the Applicant also contests the computation in this application.

The Applicant and the Respondent filed their respective affidavits in support and in opposition, respectively. The Applicant was represented by Mr. Mukwaya Deo while the Respondent was represented by Ms. Gloria Twinomugisha. Both Counsel filed written submissions to argue the application. Counsel for the Respondent raised a preliminary objection, on the point of law that this application is not amenable for judicial review; it being time barred. It is called for to dispose of this issue first given that limitation of actions is substantively an issue of law which has the effect of ousting the jurisdiction of court if found to exist, except where there are exemption factors to the law of limitation which must have been pleaded. This is a mandatory requirement under Order 7 r. 6 CPR which provides as follows;

"Grounds of exemption from limitations.

Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint

shall show the grounds upon which exemption from that law is claimed."

Counsel for the Respondent submitted that the Applicant's claim was filed out of time without an order for the extension of time granted by court. To support this proposition, counsel cited Rule 5(1) of the Judicature (Judicial Review) Rules 2009, which requires that an application for review shall be filed promptly but in any case not later than three months from the date when the ground of the application first arose unless court considers that there is good reason to extent the time. Counsel submitted that upon receipt of the termination letter on 29/05/2018, the Applicant formally appeal the decision to the Staff Appeals Committee, which considered his submission and found no merit in the grounds advanced by the Applicant to support the appeal and on 17/07/2018 upheld the decision to terminate him. That in effect, the Applicant is challenging the Respondent's decision made on 29/03/2018 to terminate him, but he filed this application ten months later without any application having been made to court to extend the time to file the application. Counsel cited the case of ***IP.Mugumya vs. Attorney General HCMC No. 116 of 2015,*** where

court held that an application for judicial review filed after three months when the ground of application first arose shall not be allowed unless there is an application for extension of time. That the application in that case was dismissed. Counsel herein submitted that this application also be dismissed with costs.

In reply, counsel for the Applicant submitted that the objection raised by counsel for the Respondent is unsustainable at this stage of the suit. That the application raises matters of continuous illegality which is an exception to the law of limitation of time. Further, that save for limitation of time, the objection can only be determined after court has fully examined the facts and evidence to determine the propriety of remedies, which is contrary to settled law that such objections can only be presumed on the law. To support this argument, counsel relied ***Republic vs. Public Procurement Administrative Review Board H.C.J.R No. 14 of 2018 (Nairobi).***

Counsel further argued that Rule 5 (1) Judicature (Judicial Review) Rules (supra) is not couched in mandatory terms and gives court discretion to consider reasons for extension of time. That, therefore, court's discretionary powers to enlarge time is unfettered. That besides, the provision does not prescribe sanctions for non-

compliance and as such, it is construed as directory rather than mandatory. Counsel also argued that rules are handmaidens of justice. That since the right of judicial review is constitutional, an Act of Parliament setting time limit as to when it ought to be actionable cannot be set by a rule of procedure, and rules of procedure cannot be applied to determine when the parties are meant to exercise their right of action. Counsel relied on ***Sitenda Sebalu vs. Sam K. Njuba SCEP No. 26 of 2007; Kuluo Joseph Or's vs. Attorney General & O'rs HCMC No. 106 of 2010;*** and ***Mulindwa vs. Kisubika SCCA No. 12 of 2014***. Counsel further submitted that Rule 5(1) (supra) does not require the Applicant to make a separate application for extension of time; but rather gives court discretion to extend time where there is good reason. That the court has the right of action to scrutinize the facts of the cause of delay other than instantly dropping the axe. Counsel relied on ***Okoth Umaru & O'rs vs. Busia Municipal Council HCMC No. 12 of 2016 (Mbale).*** Counsel thus submitted that the objection be overruled and court proceeds to hear and determine the application on merits.

Opinion:

Under the Judicature (Judicial Review) (Amendment) Rules 2019, Rule 7 (A) (1) (9); court is enjoined to satisfy itself that the application is amenable for judicial review. Among other stated considerations, an application for judicial review is amenable for judicial review if it is brought in time prescribed by the rules. The Judicature (Judicial Review) Rules 2009 under Rule 5 (1) thereof prescribes the time for applying for judicial review as follows;

"Time for applying for judicial review.

(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."

Under sub-rule (3) thereof, it is provided that;

"This rule shall apply, without prejudice, to any statutory

provision which has the effect of limiting the time within which an application for judicial review may be made."

These provisions have previously been considered by court in ***I.P. Mugumya vs. AG*** (supra) and similar arguments as in the present case were advanced. The court, however, held that from the clear wording of rule, an application for judicial review has to be filed within three months from the date the grounds of the application first arose, unless the application is made for extension of time. Court went on to hold that the failure to bring the application in the prescribed time and the failure to seek and obtain court's order extending the time; renders the application for judicial review time barred and therefore not amenable for judicial review. This court fully agrees with that decision in all respects, and only adds that the general effect of the expiration of the limitation period is that the remedy is also barred.

Counsel for the Applicant strenuously attempted to argue that non-compliance with Rule 5(supra) is an irregularity and that the rule is not mandatory as it is a statutory instrument, unlike a creature of statute, and that the opposite party has not suffered any prejudice. That argument is, however, fundamentally flawed in a number of respects. Firstly, the underlying principle of limitation of actions is that, once a cause of action has become barred, subsequent

developments cannot revive it. See ***Nicholson vs. England [1926] 2 KB 93; Arnold vs. Central Electricity Generating Board [1988] AC 288.***

Secondly, limitation of action is not concerned with merits. It is usually strict and inflexible and litigation shall be automatically stifled after the fixed period of time, regardless of the merits of the particular case. See: ***Hilton vs. Steam Laundry [1946] 1 KB 61 at page 81.*** Therefore, the argument that the opposite party would not be prejudiced is immaterial and irrelevant in the circumstances.

Counsel for Applicant also appears to suggest that the burden under Rule 5 (1) (supra) for the extension of time is cast upon the court to find good reason without any application being made by the parties to extend the time. This argument quite erroneous. Courts do not exist to make cases for and on behalf of litigants. Courts only resolve live disputes put across before them based on law, the grounds and the evidence canvassed by parties. In this case, it is not the duty of this court to speculate that the Applicant was or might have been prevented by good reasons from filing his application in time set by law and then on basis of such speculation extend the time. Such would be for court descending into the area

which is inherently dangerous. It has the intrinsic effect of court turning itself into a litigant, witness and judge at the same time. That would grossly contravene the principles of natural justice. It is always incumbent upon the party seeking for extension of time to properly demonstrate good reasons for such extension in an application because court would not know them before they are shown on evidence. An application for extension is very crucial because the opposite party would need to be heard in the matter for the reasons advanced thereby. The court cannot unilaterally extend time without an application of the parties. To do so would amount to condemning the parties unheard in that matter, which is also contrary to principles of natural justice and such a decision would naturally not stand. See: ***Musinguzi Geoffrey vs. Kiruhura District Local Administration HCT – 05 – CV – MA – 193 – 2011 (Mbarara).***

Court finds that the cases cited by counsel for the Applicant are largely not applicable and are distinguishable on facts and principles, from the instant case. The reading of the cases shows that in all the extension for good reasons was demonstrated. No reason has been demonstrated in the instant application.

The argument that Rule 5 (1) (supra) does not prescribe sanctions hence not mandatory, is also a wrong proposition. Rules apply and must be followed and the failure to adhere to them is at the risk of the party ignoring them. In this case, Rule 5 (1) (supra) not only provides the time limit to file the application for judicial review but also a remedy in the event of failure to file within the prescribed time. Where the rules have prescribed time for bringing an action and also the remedy for failure to bring the action in the prescribed time and a party fails to avail itself of either options, such party cannot throw itself at the mercy of court because the court would no longer have any spare remedy to offer.

Court has also had occasion to read and appreciate the ***Kuluo Joseph Adrew case*** (supra) cited by counsel for the Applicant. At page 6 thereof, court expressed the view that there has to be good reason for extending the period within which the application shall be made. Court did not state that on its own volition it could look for and find "good reasons" for extending the time where none has been demonstrated by the applicant who seeks the extension.

Also, whether a dismissal of an employee is illegal or not, is a matter of evidence and it cannot be determined merely on basis of

the pleadings alone. To come to the conclusion that the dismissal amounts to an illegality, evidence must be adduced by parties and evaluated along with the law applicable by the court. Needless to state, that coming to that conclusion is a decision that determines one of the grounds of this application. It also addresses the prayer made in the application for the declaration to that effect. Therefore, the argument that once an illegality is brought to attention of court it overrides issues of limitation of action, is untenable in circumstances of this case. Where a prayer sought in pleadings is for a declaration that the dismissal of an employee was illegal, it becomes a matter of the merits of the case. It has to be substantively litigated upon before coming to the conclusion that the dismissal was illegal. As already found, limitation of actions is not concerned with merits. Similarly, in this case, whether the decision to dismiss the Applicant was legally meritorious or not, cannot be ground to overlook the legal requirement of limitation of action. That renders this application wholly not amenable for judicial review. It is incompetent for being filed out time without seeking extension of time. That finding disposes of the entire application, which is dismissed with costs.

5

BASHAIJA K. ANDREW
JUDGE
29/04/2020.