

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
MISCELLANEOUS APPLICATION No. 0043 OF 2021
(Arising out of Civil Application No. 0041 of 2021)

KWESIGA VIVIAN::::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

RUBANDA DISTRICT LOCAL GOVERNMENT:::RESPONDENT

BEFORE: HON. JUSTICE SAMUEL EMOKOR

RULING

The Applicant brings the instant Application by Notice of Motion under **Section 33** of the **Judicature Act**, **Section 98** of the **Civil Procedure Act** **Order 52 rules 1 and 3 Civil Procedure Rules** seeking orders that enlargement of time for filing HCC Application No. 041 of 2021, validation of the late filing of HCC Application No. 041 of 2021 be granted and that provision be made for costs.

The grounds upon which this Application is premised are as follows;

- a) That on the 16th December, 2019, the Respondent through its Chief Administrative Officer interdicted the applicant from his duty as Senior Assistant Secretary (Sub – County Chief) on allegations of gross misconduct and abuse of office.
- b) The Respondent failed to conduct a pre and post interdiction process within the period stipulated by the law and to date the applicant is still on an indefinite interdiction and has never been afforded a disciplinary hearing to enable him respond to the allegations and or charges preferred against him.

- 5 c) The Applicant filed HCC Application No. 041/2021 before this Honorable Court for orders of Certiorari, declaration and mandamus to remove, set aside and quash the impunged decisions, orders or directives made by the Respondent.
- d) That the Applicant was required to file HCC Application No. 041/2021
10 within 3 months from when the Respondent failed to reinstate him as sub-county senior assistant secretary.
- e) That the Applicant was for sufficient reasons prevented from filing HCC Application No. 041/2021 within the stipulated time as required by under the law.
- 15 f) That HCC Application No. 041/2021 has a high likelihood of success in as far as the Respondent's impunged decision not to reinstate the Applicant and failure to conduct a pre and post interdiction process within the period stipulated by the law is illegal and amounts to abuse of office and ultra vires persecution.
- 20 g) That it is in the interest of justice that the instant Application is granted.

The Application is supported by the affidavit of the Applicant who expounds on the above grounds and in brief avers that on the 16th December, 2019, the Respondent through its Chief Administrative Officer interdicted him as the Senior Assistant Secretary (sub-county Chief) on allegations of gross misconduct and
25 abuse of office and he was required to defend himself in writing within 14 days and show cause why further disciplinary action should not be taken against him to which he complied on 13th January, 2020. That the Respondent failed to conduct a pre and post interdiction process within the period stipulated by the law and to

5 date the Applicant is still on an indefinite interdiction and has never been afforded
a disciplinary hearing. That as a redress, the Applicant filed HCMA no. 041/2021
before this Court and was prevented from filing the same within the stipulated
period for sufficient cause because in October, 2020 after the 2020 National
Lockdown, he was given the impression that his file was being worked on only to
10 be re-arrested under SD 39/13/10/2020 on the same charges and detained at
Rubanda Police Station until his release on 5th November, 2020 on Police bond.
That it is in the interest of justice and fairness that the instant Application for
extension of time and validation of the late filing of HCC Application No. 041/2021
is granted.

15 The Respondent's Chief Administrative Officer one Kwizera Alex filed an affidavit
in reply to the instant Application and in brief avers that the Applicant was
interdicted by the former Chief Administrative Officer Mr. Muramira Aggrey on
the 16th December, 2019 and that the Applicant was supposedly arrested on
charges of embezzlement in October, 2020 and was released on Police bond on
20 5th November, 2020.

That the Applicant ought to have filed the Application for Judicial Review within
3 months from the date of his interdiction as required by the law and there was
an in ordinate delay by the Applicant in bringing this Application for extension of
time to file an Application for Judicial review. Further that the Applicant has failed
25 to show that he has sufficient reasons that prevented him from filing the instant
Application within the stipulated time and the instant Application is an illegality
that is being used by the Applicant as an ulterior motive for abuse of Court

5 process, the Application is misconceived, vexatious and a blatant violation of the law and ought to be dismissed.

REPRESENTATION.

The Applicant was represented by Messrs Nyanzi Kiboneka & Mbabazi Advocates while the Respondent was represented by the Attorney General's chambers.

10 Both sides to this Application proceeded by way of written submissions

Applicant's arguments

It is the submissions of Counsel for the Applicant that this Court is empowered by law to extend or enlarge time for filing an Application for Judicial Review under **Section 3(7) of the Judicature (amendment) Act 2002 and Rule 1(5)(1) and**
15 **Rule 5 (1) of the Judicature (Judicial Review) Rules 2009.**

Counsel contends that under the law, good or sufficient reasons must relate to the inability or failure to take the particular step in time and relies on the decision in William **Odoi Nyandusi versus Jackson Oyuko Kasendi CAC Application No. 32/2018.**

20 On what constitutes sufficient cause, Counsel relies on **Shanti versus Hindocha & others [1973] EA 207** in which the Court held that;

“The position of an Applicant for extension of time is entirely different from that of an Applicant for leave to Appeal.

He is concerned with showing sufficient reason why he should be given more time
25 *and the most persuasive reason that he can show is that delay has not been caused*

5 *or contributed to by dilatory conduct on his own part. But there are other reasons and these are all matters of degree.”*

It is the argument of Counsel that the Applicant avers that he was prevented from filing HCC Application No. 041/2021 within the stipulated time because of the effects caused by the national lockdown which started sometime on 19th March, 10 2020 until sometime in August and that after the lockdown he was given the impression that his file was being worked on until he was re-arrested under SD 39/13/10/2020 and detained at Rubanda police Station until his release on 5th November, 2020 on Police bond.

It is the submission of Counsel that the Courts have taken judicial notice of the 15 circumstances that prevailed during the National lockdown caused by Covid and accordingly regarded any delay arising thereof as sufficient reason for inability or failure to take a particular step in time. To this effect, Counsel relied on the decision in **Patrick Moni Omony versus URA HCCMC No. 234/2020** in which Justice Wamala observed thus;

20 *“It is not in dispute that during the period between March and August 2020, Uganda, just like the entire world was under lockdown that was occasioned by the Covid-19 pandemic. Although as stated by the Respondent’s Counsel, the Courts remained open for the purpose of filing matters, it needs no emphasis that most aspects of life remained locked. These included a restriction on movement of*
25 *persons and on Office operations. It would therefore, be expecting too much of the Applicant that he ought to have beaten all odds to ensure that he file his matter within time. I find it sufficiently excusable that the Applicant was unable to bring the Application in time.”*

5 Counsel as a result submits that the Applicant is seeking Court to evoke and exercise its discretion by firstly extending and enlarging time within which to file and then validate the late filing of HCC Application No. 0041/2021 for Judicial Review.

Counsel further contends that Courts have in circumstances similar to the instant
10 one considered fairness and interest of justice to be sufficient reason to grant an Application for extension of time within which to file an Application for Judicial Review and in this regard Counsel cites the decision in **Byamukama Edson versus Makerere University HCMC No. 185/2007**.

Counsel for the Applicant argues also that the administration of Justice should
15 require that the substance of disputes be investigated and decided on their merits and that errors or lapses should not necessarily debar a litigant from pursuing his right unless lack of adherence to the rules renders the hearing process difficult and inoperative. Counsel to buttress this point refers to the decisions in **Banco Arabe Espanol versus Bank of Uganda [1999] 2 EA 22** and **Re Christine**
20 **Namatovu Tebajuka [1992-93] HCB 85**.

Counsel for the Applicant therefore prays that the instant Application is granted.

The Respondent's Counsel in their submissions in reply oppose the Application by raising preliminary objections that the instant Application is incompetent, irregular and a blatant abuse of Court process. According to the Respondent's
25 Counsel HCM Application No. 0041/2021 for Judicial Review was filed on the 22nd September, 2021 after the expiry of the time allowed for applying for Judicial Review of 3 months and that upon realization of this, the Applicant later filed

5 HCM Application No. 043/2021 which is the instant Application for enlargement
of time to file the Application for Judicial Review. Counsel submits that the rules
of Procedure are of strict Application and that under **Rule 5(1) of the Judicature**
(Judicial Review) Rules an Application for Judicial Review must be filed
promptly and in any event within three months from the date when the grounds
10 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. To this
effect, Counsel relied on the decision in **Dawson Kadope versus URA HCMC No.**
0040/2019 in which Court held that from the clear wording of the above rule, an
Application for judicial Review has to be filed within 3 months from the date the
15 grounds of the Application first arose, unless the Application is made for
extension of time and that the Court went on further to hold that failure to bring
the Application within the prescribed time and failure to seek and obtain Courts
orders extending the time renders the Application for judicial review time barred
and therefore not amenable to judicial review.

20 It is the contention of the Respondent's Counsel that the Applicant was interdicted
on 16th December, 2019 which interdiction was to be lifted after 3 months of
investigations according to the Uganda Public Service standing orders and that
the grounds for judicial review first arose on or around 16th June, 2020 and they
take note of the fact that there was a national lockdown during the Covid-19
25 pandemic however that the same was lifted by July, 2020 and that the Applicant
still failed to take the essential steps as required by the law and the Application
for judicial Review was filed by the Applicant in September, 2021 way outside the
time prescribed by the law and without first seeking and obtaining extension of

5 time from the Court. That the instant Application for extension of time was only filed later and that the Applicant has failed to show reasonable justification as to why he failed to first seek leave of Court for extension of time to apply for judicial review.

Counsel therefore prays that this Court finds that the instant Application is
10 incompetent, statute barred and an abuse of Court process.

Counsel for the Applicant in rejoinder contends that it is not irregular or an abuse of Court process to file an application for enlargement of time and validation and that the same is not strange in law. To buttress his argument Counsel relied on the case in **Tushabe Cris versus Co-operative Bank Ltd SCCA No. 08/2018** in
15 which Counsel argues that the Appellant filed a notice of Appeal out of the statutory period but subsequently filed an Application for extension of time and validation of the late filing of the notice of Appeal and that the Court proceeded to hear and grant the same. Counsel therefore prays that the instant Application is granted.

20 **DETERMINATION**

The submission of the Respondent in objection to the instant Application that the same is incompetent, irregular and a blatant abuse of Court process because the Applicant first filed the main Application for judicial Review vide HCMA No. 41/2021 on 22nd September, 2021 after the expiry of the statutory time limits and
25 then upon realization of this filed the instant Application HCMA No. 43/2021 for enlargement time is unfortunately not tenable. I fully appreciate the concerns of the Respondent because it would appear that the Applicant in filing his main

5 Application vide HCMA No. 41/2021 appears to have placed the cart before the horse but this scenario is remedied by the Applicant in filing the instant Application for extension of time in HCMA No. 41/2021

It must also be noted that both Applications were filed on the 22nd September, 2021 and it is therefore not true that the instant Application was filed later as an
10 afterthought. In fact the main Application that seeks judicial review in HCMA No. 41/2021 apart from bearing the dated stamp of receipt and the file number the same is yet to be endorsed by the Registrar of this Court and this will be presumably after a date is allocated for its hearing.

The filing of simultaneous Applications is not fatal to the Applicant's cause nor
15 would it have made any difference if HCMA No. 41/2021 had been filed first and the same is followed by the instant Application for enlargement of time. The Applicant would only have suffered defeat if HCMA 41/2021 had been entertained first by the Court in which case the same would have been barred by law for being filed out of time and without leave of the Court.

20 I am fortified in this position by the decision cited by the Applicant's Counsel in **Tushabe Cris versus Co-operative Bank Ltd (Supra)** in which the Applicant had filed first his notice of Appeal and thereafter filed his Application for enlargement of time within which he should have filed his notice of Appeal against the decision of the Court of Appeal. The Court in its decision did not consider it fatal that the
25 Application for extension of time was filed after the notice of Appeal. The Preliminary Objection shall therefore be overruled.

I will now move to the substance of this Application.

5 **Rule 5(1) of the Judicature (Judicial Review) Rules 2009 provides that:**

“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”

10 It therefore follows that for the instant Application to succeed, the Applicant must demonstrate to Court that there is a good reason or show that there is sufficient cause for extending the period within which the Application is to be made.

The Court in **Hadondo Daniel Vs Yolam Egondi CA Civil Appeal No. 67/2003** held that;

15 *“It is trite law that time can only be extended if sufficient cause is shown. The sufficient cause must relate to the inability or failure to take necessary steps within the prescribed time. It does not relate to taking a wrong decision. If the Applicant is found to be guilty of dilatory conduct, the time will not be extended”*

On what constitutes sufficient cause, the Court in **Gideon Mosa Onchwati versus Kenya Oil Company Ltd & Another [2017] KLR** cited the decision of the supreme Court in **Parimal versus Veena** which attempted to describe sufficient cause thus;

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“Sufficient cause” is an expression which has been used in a large number of statutes. The meaning of the word “sufficient” is “adequate” or “enough” in as much as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and

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5 *circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man...”*

It is not in dispute that the Applicant was employed as the Respondent’s Senior Assistant secretary(sub-county Chief) for the period 2016 to 16th December, 2019 when the Applicant was interdicted by the Chief Administrative Officer of the
10 Respondent on allegations of gross misconduct and abuse of Office.

It is also not in dispute that the Applicant was later arrested on charges of embezzlement in October, 2020 and released on Police bond on 5th November, 2020.

It is also not in dispute that the Applicant has never undergone any form of
15 disciplinary proceedings conducted by the Respondent nor has the Applicant been formally charged in a Court of law and remains on interdiction to date.

Counsel for the Applicant argues correctly in my view that under **paragraphs F-S (14)** of the **Public Standing Orders 2021**, the Respondent was required to ensure that the charges against the Applicant were investigated expeditiously and
20 concluded within three months for cases that do not involve the police and Courts and 6 months for cases that involve the Police and Courts of law.

Counsel for the Respondent in her written submissions contends that the grounds for judicial review arose on the 16th June, 2020 that is 6 months after the interdiction of the Applicant on 16th December, 2019 in view of the cited
25 provisions of the **Public Standing Orders**. The Applicant’s Counsel in his rejoinder did not contest this position of 6 months. I will reproduce for clarity **Section (F-S) 14(b)** of the **Public Standing Order 2021** below;

5 “Where a Public Officer is interdicted, investigations shall be concluded expeditiously within 3(three) months for cases that do not involve the Police and Courts and 6(six) months for cases that involve the Police and Courts of law”

While 14(g) provides that:

“After investigations the responsible Officer shall refer the case to the relevant
10 service commission with recommendations of the actions to be taken and relevant documents to justify or support the recommendation should be attached”

There is absolutely no evidence that the Respondent complied with the requirements of 14(g) above for the time under consideration to be calculated. It is actually a gamble for one to rely on the 6 months because the Applicant ought
15 to have known the basis of her continued interdiction after the investigations were concluded and this would have informed the Applicant’s course of action thereafter. As it stands, the Applicant is on indefinite suspension since 16th December, 2019 and this goes against the provision of Section (F-S) 15 that provides that:

20 “Where the responsible Officer is unable to conclude an investigation within six (6) months, the interdiction may be lifted on condition that the matter will be revisited when further evidence by the investigating bodies is adduced”

The reasons advanced by the Applicant of filing this Application on 22nd September, 2021 is due to the Covid-19 pandemic and the lockdown that followed
25 the same does not allow for much argument in view of the travel restrictions that followed the pandemic and cognizance must also be given to the circulars issued by the Hon Chief Justice that put in place contingency measures to prevent and

5 mitigate the spread of Covid-19 that included circulars issued on 19th March, 26th March, 29th April, 5th May, 6th June, 29th June, 29th July, 2020, 29th January, 7th June and 21st June, 2021.

10 In fact the latter had the effect of scaling down Court operations to 10% physical presence and only critical staff were to remain to attend to the daily Court business.

I am sufficiently satisfied that the Applicant has advanced sufficient reason for his inability to file HCMA No. 041/2021 within the prescribed time. The instant Application is therefore allowed in the following terms:

- 15 a) An order is issued that the time within which the Applicant had to file his Application for judicial review vide HCMA No. 41/2021 be enlarged to extent that it would result in the same filed on Court record on 22nd September, 2021 being validated.
- b) The applicant shall serve the Respondent with the said HCMA No. 41/2021 within 7 days from the delivery of this ruling.
- 20 c) The costs shall abide the outcome of HCMA No. 41/2021.

It is so ordered.

Before me,

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SAMUEL EMOKOR
JUDGE
27/03/2024