

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
MISC. APPLICATION NO. 48 OF 2020
(ARISING FROM MISC. CAUSE NO. 09 OF 2020)
IN THE MATTER OF THE JUDICATURE ACT CAP 13

AND

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

DR. PARIYO BONANE GODFREY ::: APPLICANT

VERSUS

1. DR. NATHAN ONYANCHI – DIRECTOR MASAKA REGIONAL
REFERRAL HOSPITAL
2. HEALTH SERVICE COMMISSION
3. ATTORNEY GENERAL ::: RESPONDENTS

Before; Hon. Justice Victoria Nakintu Nkwanga Katamba

RULING

This application is brought under Section 98 of the Civil Procedure Act, Rule 5(1) of the Judicature (Judicial Review) Rules 2009 and Order 52 Rules 1 & 3 of the Civil Procedure Rules seeking orders that the time for filing the application for judicial review be extended and costs of the application be provided for.

The grounds of the application as contained in the affidavit of the Applicant, Dr. Pariyo Bonane Godfrey are briefly that;

- a) The Applicant is a Medical Officer Special Grade One (Orthopaedic Surgeon) and on the 10th day of April, 2019, a resolution was made to terminate his services at Masaka Regional Hospital by the Top Management Committee;

- b) The letter of termination authored by the 1st Respondent was full of bias and the 1st respondent does not have powers to terminate employment;
- c) The Applicant wrote to the Health Service Commission protesting the illegal decision whose Secretary then wrote to the Permanent Secretary, Ministry of Health directing that a report on the Applicant's termination be provided;
- d) The delay of filing the application for judicial review was a result of the Applicant's belief that his appeal to the Health Service Commission would be heard;

In his affidavit in reply, Musota Brian of the Attorney General's Office opposed the application and stated that the Applicant has not demonstrated sufficient cause for extending the period within which to file the application for judicial review.

Both Parties filed written submissions.

Counsel for the Applicant submitted that the applicant's delay in filing the application was as a result of the belief that his appeal to the Health Service Commission would be heard, and possibly settle his grievances. That the Applicant wanted to exhaust all internal appeal mechanisms as provided in the Government Standing Orders before resorting to Court.

Counsel cited *Rule 5 (1) of the Judicature (Judicial Review) Rules 2009* which provides the application for judicial review should be filed within three months unless court considers that there is good reason for extending such time. Counsel also relied on the case of ***Dott Services & anor Versus AG Misc Cause No 0133 of 2016*** to buttress his submission.

In response, Counsel for the Respondent submitted that the Applicant is guilty of unreasonable delay having filed his application over a year. Counsel further argued that the Applicant did not exhaust all available internal mechanisms including appealing to the Head of Public Service as per *Paragraph 7 of Section G-C of the Public Standing Orders*.

In rejoinder, Counsel for the Applicant argued that the Applicant was vigilant and his belief that the matter would be settled internally delayed the filing of the application. Counsel further stated that the discretion given to court under Rule 5 allows for extension of time and further shows that the time within which to file is not mandatory.

Consideration of the application;

The Applicant herein seeks leave for the extension of time within which to file an application for judicial review.

The time within which to file an application for judicial review is stipulated under the law. **Rule 5 (1) of the Judicature (Judicial Review) Rules 2009** provides that the application shall be filed within three months from the date when the grounds of the application first arose.

The reason why there is a limitation within which to file applications for judicial review is that these matters usually affect public interest and public affairs, and therefore should be heard and resolved expeditiously. Likewise, a person who claims to be aggrieved by a decision of a public officer with grounds for judicial review should not have to wait a long time to bring such an application as the delay further affects public affairs.

Therefore, as courts consider matters of judicial review, they have to strike a balance and administer justice while protecting the rights of the parties affected by decisions made by public officers illegally, unfairly or with procedural impropriety; and at the same time protection of public interest without affecting the normal flow of public duties.

To fulfil the foregoing, the law allows for extension of time where court considers that there are sufficient reasons for extending time within which to file an application for judicial review. This is intended to protect the rights of the Parties who are aggrieved and have grounds for the remedy of judicial review as well as public interest since decisions of public officers are generally matters of public interest.

In the case of ***Hadondi Daniel vs Yolam Egondi Court of Appeal Civil Appeal No 67 of 2003*** court held that;

“ 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 step 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.”

The Applicant herein states that he was prevented from filing his application for judicial review by the delay in solving the matter internally by the involved stakeholders.

The Applicant was terminated from his office on the 10th April, 2019 according to the termination letter attached to the application which is not disputed. He adduced evidence of letters showing that he wrote to the Health Service Commission to have the matter settled internally before seeking legal redress. Letters dated 2nd December, 2019 and 7th February, 2020 addressed to the Health Service Commission and a letter from the Commission to the Permanent Secretary are on record. The Applicant stated in his affidavit that he kept engaging the Commission physically to express his dissatisfaction about the decision until he wrote the letter dated 2nd December, 2019.

The Respondent argues that waiting five months to seek redress from the Health Service Commission and then a year to file this application amounts to dilatory conduct. The Applicant on the other hand claims that the internal delays prevented him from filing in time and this is sufficient cause for the grant of this application.

The Applicant's averment that he made physical visits in attempt to settle the matter although not supported by evidence considering that the Respondent is a public office, merit his application. This is because it not uncommon for citizens to make such physical attempts before they are indeed directed on the proper procedure of handling such public office matters.

It is therefore my considered opinion that although the Applicant delayed in filing this application as well as making a formal appeal to challenge the decision of termination, he was diligent and in consideration of the application as a whole, I find it prudent that his rights be protected and the extension of time be granted to enable the final determination of his grievance.

The time stipulated in Rule 5 is not meant as a sword but rather to strike a balance in protection rights of diligent and aggrieved litigants while promoting the proper administration and settlement of matters of public interest.

The Applicant attempted to have his matter settled internally although the requirement to first exhaust internal mechanism does not deter instituting legal action. I find that this was reasonable and diligent on his part and if indeed the matter had been settled, there would be no need to proceed with hearing this matter in court. Therefore, it is prudent that the matter is entertained and finally settled.

In the result, I find that the Applicant has adduced sufficient cause for the grant of extension of time within which to file the application for judicial review.

This application is therefore allowed.

No order is made as to costs.

I so Order.

Dated at Masaka this 17th day of January, 2022

Signed;

A handwritten signature in blue ink, appearing to read 'Victoria Nkwanga', written over a horizontal line.

Victoria Nakintu Nkwanga Katamba

Judge