

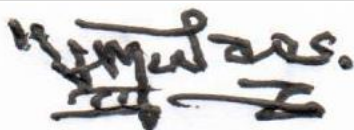
Commercial officer. That on 10th November 2022, the Town Clerk of the 2nd Respondent transferred him from the Position of Internal Auditor to Commercial Officer.

2. That on the 22nd day of December 2022, he wrote a complaint to the Ag. Town Clerk of the 2nd Respondent regarding the irregular transfer. That the Ag. Town Clerk invited him for a meeting where he pointed out the issue and the Ag. Town Clerk acknowledged that the transfer was irregular.

3. That on 29th December 2022, the Senior Human Resource Officer of the 2nd respondent wrote to the Ag. Town Clerk citing the irregularities in his transfer from the Position of Internal Auditor to Commercial officer. That the Ag. Town Clerk called the applicant for another meeting and promised that the issue would be handled. That as the applicant was waiting for a response from the Ag. Town Clerk to rectify the irregularity, on the 16th of January 2023, the Ag. Town Clerk wrote to the Applicant assigning him duties of an Internal Auditor and the applicant believed the issue had been rectified.

4. That later, the applicant's attention was drawn to an advert whose closing date was 22nd January 2023 in which the position of Internal Auditor for the 2nd Respondent was advertised by the 1st Respondent. That he inquired from the Ag. Town Clerk of the 2nd Respondent about the advert and he never received any response.

5. That on the 2nd day of March 2023, the applicant wrote to the 1st Respondent requesting the Commission to intervene and rectify the irregularity in his appointment as a Commercial Officer considering that the position of Internal Auditor had been re-advertised. That having failed to get a response,

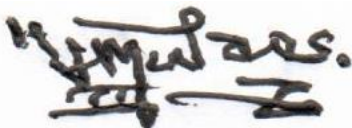


he wrote to the Public Service Commission requesting that the filling of the position of Internal Auditor be halted. That in due course, he failed to file an application for Judicial Review within the three months as provided for under the law.

- 5 6. That under the Judicial Review Rules, court may upon sufficient cause or reasons being proved that hindered a party from filing the application on time extend the time within which to present such application. That the delay was due to the unending promises by the Town Clerk of the 2nd Respondent to rectify the issue and further the letter assigning him duties of an internal
- 10 Auditor where he believed the issue had been rectified and the communication from Public Service Commission to the Respondents advising them to rectify the issue at hand.
7. That he believes the Ag. Town Clerk of the 2nd Respondent had the capacity to solve the irregularities pointed out and he promised to do but
- 15 subsequently he opted to mislead the applicant and in due course waste time. That it is fair, just and equitable that time be extended within which the applicant is to present his application for Judicial Review.

The Application was opposed by the Respondents through an affidavit of Mr. Kagaba R. Ndora, the Deputy City Town Clerk where he contended as follows;

- 20 1. That the applicant ought to have filed his application within three months as provided for under the Judicial Review Rules.
2. That the applicant complained to the Public Service Commission which wrote to the Respondent seeking a response and the same was submitted and the respondents are still waiting for a response from Public Service
- 25 Commission.



3. That the Public Service Commission has not pronounced itself about the Applicant's issue. That the application at hand is premature and intended to waste court's time.

4. That the Application at hand is barred by limitation and it ought to have been filed within three months. That it is in the interests of justice that the application is denied with costs to the Respondent.

Representation and Hearing:

The Applicant was represented by Mr. Nyakaana Patrick while the Respondents were represented by Ms Atumanyise Racheal from the Attorney General's Chambers.


Issues:

- 1. Whether there is sufficient cause for court to extend the time within which an application for Judicial Review should be filed.**
- 2. Remedies available.**

CONSIDERATION BY COURT:

Section 36(7) of the Judicature Act Cap 13 as Amended and Rule 5(1) of the Judicature (Judicial Review) Rules, 2009 provides for the time when an application for Judicial Review should be presented and it provides thus:

“An application for judicial review shall be made promptly and in any case within three months from the date when the ground of the application arose, unless the Court has good reason for extending the period within which the application shall be made.”



The above law limits the time within which an application for review is to be presented in court to three months from the time the grounds which call for review arose.

However, there is a permissible exception being that court may for sufficient cause extend the time within which one can present an application for Judicial Review. This issue was considered in the case of *The Registered Trustees of Ker Bwobo Land Development Trust Vs Nwoya District Land Board, Civil Appeal No. 08 of 2017*, where *Mubiru J* observed: “An order for enlargement of time should ordinarily be granted unless the applicant is guilty of unexplained and inordinate delay in seeking the indulgence of the Court, has not presented a reasonable explanation of his or her failure to file the application within the time prescribed by Act, or where the extension will be prejudicial to the respondent or the Court is otherwise satisfied that the intended application is not an arguable one. It would be wrong to shut an applicant out of court and deny him or her the right to challenge administrative action unless it can fairly be said that his or her action was in the circumstances inexcusable and his or her opponent was prejudiced by it. In an application of this nature, the court must balance considerations of access to justice on the one hand and the desire to have finality to administrative action on the other.”

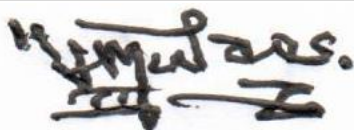
The issue of extension of time was also considered by the Supreme Court of Kenya in *Nicholas Kiptoo Arap KorirSalat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR* which was cited with approval in *Karinga Gaciani& 11 others Vs. Ndege Kabibi Kimanga& Anor, Supreme Court Application No. Eoo4 of 2023* where it was observed thus: “... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant

to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

- 5 *1. extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court;*
- 2. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;*
- 3. whether the Court should exercise the discretion to extend time, is a*
10 *consideration to be made on a case- to-case basis;*
- 4. where there is a reasonable cause for the delay, the same should be expressed to the satisfaction of the Court;*
- 5. whether there will be any prejudice suffered by the respondents, if extension is granted;*
- 15 *6. whether the application has been brought without undue delay; and*
- 7. whether in certain cases, like election petitions, public interest should be a consideration for extending time”*

I will pay attention to the following factors:

- (a) That the applicant is not guilty of unexplained and inordinate delay.
- 20 (b) That the grant will not cause any injustice to the opposite party.
- (c) That the intended application is arguable on merits.

A handwritten signature in black ink, appearing to be 'S. S. S.', is written over a horizontal line.

I have considered the explanation by the applicant and the annexure to the application regarding his transfer of service from the Position of Internal Auditor to Commercial Officer. I believe the applicant acted under the honest belief that the Ag. Town Clerk would rectify the issue and saw no need to challenge the decision. His belief was strengthened by a letter from the Town Clerk dated 16th January 2023 where he was assigned additional duties of Internal Auditor. No injustice shall be caused to the Respondents if this application is granted. At this stage, court is not required to investigate the merits of the intended application.

I grant the application with the following orders:

1. **The Applicant shall file and serve his application for Judicial Review within 10 days from the date of delivery of this Ruling.**
2. **That thereafter the statutory days for filing of pleadings shall be followed by the parties.**
3. **That the costs of this application shall abide the outcome of the intended application for Judicial Review.**

I so order.



Vincent Wagona

High Court Judge / FORT-PORTAL

DATE: 24/8/23

