THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APP NO. 847 OF 2016
ARISING FROM MISC. CAUSE NO. 188 OF 2015

MALE HASSAN :: APPLICANT

VERSUS

ATTORNEY GENERAL :: RESPONDENT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

1. This application was brought under rule 5(1) of the Judicial review rules, section 18(4) of the Interpretation Act and section 98 of the Civil Procedure Act seeking:

   i. Enlargement of time for the Applicant to file a judicial review application challenging the Advocates (Professional Requirement For Admission to Post Graduate Bar Course (Amendment) Notice 2010, Legal Notice No. 5 of 2010.

   ii. Costs be in the cause.

2. The application is supported by the affidavit of the Applicant. The grounds for the application briefly were that the Applicant filed Misc. cause No. 188 of 2015 which was struck out on grounds that he should have proceeded by way of judicial review. He was prevented from filing for judicial review by a mistaken but honest belief that the actions of the Respondent's agency of the Law Council would be challenged by way of human rights enforcement which amounts to a good cause to grant this application.

3. In Misc. cause 188 of 2015, the Applicant filed the instant application under articles 30, 40(2) and 50 of the Constitution and Rule 3 of the Judicature (Fundamental Rights and

Freedoms) (Enforcement Procedure) Rules for enforcement of rights. In his ruling on 29th August 2016, Justice Nyanzi concluded saying in paragraphs 30 and 31 "…. The Applicant ought to have known that he was barred by time and hence circumvented this by sugar coating the application to appear like its brought under Article 50. I will not delve into the merits of this case because in determining the issues, judicial review principles are necessary since they give the boarder line of whether the Advocates (Professional Requirement for admission to Post Graduate Bar Course (amendment) Notice 2010 Legal Notice No. 5 of 2010 was null and void for being made *ultra vires*. I cannot determine this application without delving into judicial review."

4. In paragraph 31 the learned judge said that "since this application ought to have been brought under judicial review, it is dismissed for being time barred and for commencing under a wrong law. No order is made as to costs as the Applicant to me seemed to be pursuing a public litigation matter."

5. I agree with Justice Nyanzi with nothing useful to add. The Applicant must have known at the time of filing Misc. cause 188 of 2015 that he needed to file a judicial review application. He should have applied for extension of time at the earliest opportunity. Instead, he filed the enforcement of rights application which resulted in further delays or wastage of time.

6. In the circumstances of this case I am reluctant to consider as truthful the Applicant's averments in paragraph 2 of his notice of motion and 5 and 6 of his affidavit in support thereto, that he was prevented by a mistaken but honest belief that the actions of the Respondent would be challenged by way of human rights enforcement. In addition, I am not in position to say that his application has a high likelihood of success or that it concerns a matter of great public importance.

7. There is something more glaring. The rules the Applicant seeks to challenge are dated 23rd July 2010. The first application for enforcement of rights was filed in court over five years

later on 8th December 2015 and this application for extension of time was filed on 11th October 2016.

8. So even when Justice Nyanzi told the Applicant that he should have filed for judicial review in his ruling of 29th August 2016, still the application for extension was filed 6 years after the rules he seeks to challenge.

9. In these circumstances, it is easy to infer that the Applicant was not vigilant, he sat on his rights to bring the judicial review action until after five years then he started a fishing expedition for a procedure that could allow him to bring his action under the law. This is unacceptable.

10. Mindful of the importance of an Applicant's rights to judicial review, it is also important that there must be an end to litigation processes in judicial review. Institutions must be allowed to work confidently and with certainty of their processes. They cannot achieve this if they have to worry about challenges like this application brought over five year after the stipulated time requirements.

11. In this case a judicial review challenge to the 2010 rules should have been filed by 23rd October 2010.. The Applicant fails abysmally to demonstrate any good reason to justify extension of time under rule 5(1) of the judicial review rules, section 98 of the Civil Procedure Act and section 33 of the Judicature Act. Accordingly the application is dismissed. To avoid acrimony between the parties, each party shall bear its own costs.

I so order.

Lydia Mugambe.
Judge.
10 June 2020.