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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

JUDICIAL REVIEW CASE NUMBER 72 OF 2017

BETWEEN:

PETER CHAKANZA

APPLICANT

AND

**THE SECRETARY FOR LANDS AND URBAN
DEVELOPMENT**

RESPONDENT

CORAM: JUSTICE M.A. TEMBO

Pearson, Counsel for the Applicant
Mankhambera, Court clerk

ORDER

This is an order of this Court on the applicant's application, under Order 19 rule 20 (3) Courts (High Court) (Civil Procedure) Rules, for an order for permission to apply for judicial review of the respondent's decision, namely, the decision and order of the respondent conclusively made on 15th September 2017 in so far as he has decided to keep mute regarding the applicant's consideration for promotion, by way of interviews following the vacancy advertisement which was carried in the Nation Newspaper dated 14th February 2006, without due regard to the applicant's right to fair labour practices, reasonableness of the decision, manifest bad faith and inconsistent with the applicant's legitimate expectations.

TRANSMISSION
7/10/2008

If granted permission, the applicant seeks that the decision of the respondent be quashed.

The application was heard on notice to the respondent who did not attend the hearing.

The names of the parties should have read claimant and defendant respectively but for the fact that the application was filed when the issue of nomenclature of the parties in proceedings for judicial review was not yet settled in view of the current rules of civil procedure.

The case of the applicant, as presented in his application for permission to apply for judicial review, is as follows.

He is a public servant. He is an Assistant Lithographer (Grade K) with effect from 7th January 2008 having been promoted to that position by letter dated 9th April 2008.

He was first employed as permanent Lithographic Assistant (TA) on 1st February 1983.

From 1983 to 2008 he was never promoted to any senior post despite his hard work and performance of duties for a P8 position without any consideration for additional pay.

He indicated some important works that he has produced such as a Presidential Portrait he produced in 1980, National Atlas of Malawi that he produced in 1983, Kapichila Falls diagram which he produced in 1985 and the Zambia-Malawi boarder map.

Since 1999 he had been requesting the respondent to consider him for a promotion but it was all in vain and he has never been considered for a senior position.

On 27th September 2000 he decided to lodge a complaint with the Ombudsman on grounds that he was a victim of oppression by being denied career advancement and being subjected to unfair labour practices.

Upon a full inquiry, the Ombudsman made a determination that the applicant was a victim of injustice due to the respondent's failure to fill vacant positions timely and directed the respondent to take appropriate administrative action to create new positions in the Lithographic section.

In compliance with the determination of the Ombudsman, in February 2006 the respondent advertised a vacancy on the post of Senior Photographer (P8/Grade H) which the applicant applied for. He legitimately expected to be invited for an interview.

The applicant has however not been invited to an interview to date. He has also not been advised regarding the status of his application herein despite the background of this matter.

In 2007 the applicant commenced an action claiming for relief for the victimization he suffered herein and he was awarded damages by the High Court.

By a letter dated 9th April 2008, the applicant was promoted to his current position. He states that he was surprised by this move. His current post is not a senior post.

On 18th October 2016 he unsuccessfully took out contempt of court proceedings against the defendant for failing to promote him to a senior post.

He asserts that since 2006 to date he has been patiently waiting for consideration of his application for the vacancy herein or communication from the respondent regarding the status of his application and the anticipated interview.

He states that on 15th September 2017 he orally confronted the respondent about the status of his 2006 application and he was told that the said application would not be considered.

He asserted further that the respondent's decision is against his constitutional right to fair labour practices, fair administrative practices and the right to legitimate expectation and must be quashed by way of judicial review.

The applicant wishes this Court to consider that he waited patiently for eleven years before applying for permission to commence judicial review proceedings.

This Court is however of the view that the applicant having noted that the respondent was not reverting to him on his application he ought within a reasonable time of applying for the senior position in 2006 to have sought judicial review.

It cannot be the case that the applicant should use the oral response of 15th September 2017 as the material date to ground the present application. The point of reference

in relation to the time for applying for judicial review is that date of the application itself in February 2006.

The relevant rules of procedure require that an application to commence judicial review proceedings must be made promptly and no later than three months from the date of the impugned decision. See Order 19 rule 20 (5) Courts (High Court) (Civil Procedure) Rules.

This Court has power to extend that period. See Order 19 rule 20 (6) Courts (High Court) (Civil Procedure) Rules.

In *ex parte Merman and others* Judicial review number 44 of 2014 (High Court) (unreported) this Court had the following to say in relation to the requirement to apply for judicial review within a similar stated period under the similarly worded rule under the old rules of procedure

It is sometimes thought that an applicant for judicial review is always allowed three months in which to make his application for leave, and provided that he lodges it within that period leave cannot be refused on the grounds of delay. That is not so. The primary requirement laid down by the rules namely Order 53 r.4 (1) Rules of Supreme Court is that the application must be made "promptly," followed by the secondary provision " ... and in any event within three months ... " Thus, there can be cases where, even though the application for leave was made within the three-month period, leave might be refused because, on the facts, the application had not been made promptly. For an example of such a case see: *R. v. Independent Television Commission, ex p. TV NI Ltd* (1991) The Times, December 30, CA.

On the other hand, the court has power to extend time for applying for leave to move for judicial review, but only if it considers that there is "good reason" for doing so. see Order 53 r.4 (1) Rules of Supreme Court. Where an application to extend the time is made under r.4 notice thereof must be given to the person who will be respondent to the motion . see *R. v. Ashford, Kent JJ., ex p. Rickley* [1955] 1 W.L.R. 562; [1955] 2 All E.R. 327n. The court will consider whether the grant of an extension of time for applying for judicial review will be likely to cause substantial hardship or prejudice, not only to the instant parties, but to a wider public or may be detrimental to good administration.

The applicant was required to apply for permission to commence judicial review promptly but no later than three months from the impugned decision. This is easy to apply where the decision date is clearly ascertainable.

This Court notes that in the present matter the complaint is effectively about delay in decision making. Even then, the applicant ought to have acted promptly having become aware that the respondent was not acting on his application. The applicant would have sought extension of the three months period within a reasonable time of becoming aware of the impugned action of the respondent.

The applicant herein however waited for eleven years after making his application to seek to have the decision of the respondent review. That is outside the period of three months allowed for seeking judicial review.

Even if a reasonable extension was allowed to the applicant outside the three months period for him to be sure that his application was not being attended to, and to seek judicial review, the period of eleven years surely falls way out of such allowance.

In the circumstances, this Court is of the view that while it sympathizes with the plight of the claimant the application herein is out of time. Time cannot be extended as such an extension would be detrimental to good administration. We cannot be dealing with a judicial review matter eleven years after the fact.

The application for permission to apply for judicial review is accordingly declined.

Made in chambers at Blantyre this 26th March 2019



M.A. Tembo
JUDGE