

- A (13) Act with scrupulous fairness, otherwise the value of the identification
as evidence will depreciate considerably.

B As it has occurred the evidence upon which this case will succeed
or fail almost entirely depends on the testimony of Bosco Yustin
Mbuzi (PW1). This is the man who has been found by the lady Assessors
as an unreliable witness. They made this opinion when the witness
asserted that he could identify the late Lordinand Twaha Choga by
face even though he had earlier testified that the man he saw was
C wearing a "puma" hat with a large brim which when a telephone,
call was made the Police were already aware of the incident and
they had already rushed to the scene; and when PW1 returned there
the slain people had already been taken to hospital. All that he witnessed
D was the recovery of spent cartridges which were recovered by the
Police officers who accompanied him.

E And, although at first he denied in cross-examination that he was
not terrified, when pressed further he admitted that it is true he was
frightened. In my judgment therefore, the fearsome attack, the witness's
conduct and the conditions at the scene did not favour a correct
identification. I am, therefore, at one with the lady Assessors that
PW1 could not have correctly identified the armed gangsters in these
F circumstances.

G Upon considering the evidence, and having taken the opinions
of the lady Assessors into account, I am satisfied that the accused's
innocence is beyond reproach. Consequently I find him not guilty
on each of the two counts of murder as charged. I acquit him as a
result.

H Unless, therefore, he be further held in custody on account of
any other legally justified ground, he has regained his liberty forthwith.

A **APASIANA KWEKA v. HON PAUL KIMITI, MINISTER
FOR LABOUR**

B HIGH COURT OF TANZANIA
AT ARUSHA
(Msoffe, J.)

C **CIVIL APPLICATION No. 167 OF 1999**

*Prerogative Orders – Certiorari – Limitation of time in which to apply for leave
to apply for certiorari – Application made more than four years after the
action complained of – Application time barred – Section 18(3) of the Law
Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance.*

Limitation of time – Prerogative orders.

E On 19 November 1999 the applicant lodged this application seeking leave to apply for
certiorari and mandamus against the respondent in relation to a decision made by
the latter on 6 May 1995. The respondent objected to the application on grounds of
limitation of time but the applicant contended that she had delay filing this application
because even as she filed the application she was not officially served with a copy of
the respondent's decision.

F **Held:** (i) As per section 18(3) of the Law Reform (Fatal Accidents and Miscellaneous
Provisions) Ordinance Chapter 360, the application ought to have been filed within
six months from the date of the respondent's decision, the 6 May 1995; that was not
done;

G (ii) The claim that the applicant has not been officially served with the respondent's
decision cannot be accepted because in her own affidavit she says she received the
respondent's decision on the 8 January 1996.

H **Application struck out**

Statutory provisions referred to:

- I 1. Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance
Chapter 360, section 18(3)

A Mrs Ntilatwa, for the Respondent

RULING

(Delivered 23 June 2000)

B

C **Msoffe, J.:** This is an application for leave to apply for orders of *certiorari* and *mandamus*. It is taken at the instance of the applicant – Ms Apasiana Kweka. As far as I could gather from her affidavit in support of the Chamber Application, there is no dispute that the applicant was employed by Novotel Mount Meru Hotel in 1977 and her services were terminated on 5 August 1994. Aggrieved by the termination, she appealed to the area Conciliation Board where she was successful. D Dissatisfied, her former employer challenged the decision on appeal to the Minister for Labour. The Minister allowed the appeal by quashing the Board's decision and ordered the applicant's summary dismissal. The Minister's decision was given on 6 May 1995 in the absence of the applicant. On 19 November 1999 she filed this application for leave to apply for orders of *certiorari* and *mandamus* vied ERV Number 09231375 of that date. E

F The respondents through the office of the Attorney General have taken a preliminary point of objection that the application is time barred. There is sense in the objection as shall be demonstrated hereunder.

G The Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance Chapter 360 as amended by Act Number 55 of 1968 provides under section 18(3) thereto (as amended) thus:

H In the case of an application for an order of *certiorari* to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, *leave shall not be granted unless the application for leave is made not later than six months after the date of the proceeding; or such shorter period as may be prescribed under any Act and where the proceeding is subject to appeal, and the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.* [emphasis supplied] I

A In the instant case, it will be obvious that the application ought to have been filed within a period of six months from the date of the minister's decision (6 May 1995). That was not done. Instead, the applicant has tried to show at some great length that she could not file the application earlier than now because the decision of the Minister has in fact not been "officially" served on her to-date. She said that much in her reply to the counter affidavit and also in her written submission in support of the application. With respect, the applicant cannot be trusted on this point. In her own affidavit in support of the Chamber Application she deposed under paragraph 5 thereof that she received a copy of the minister's decision on 8 January 1996. She nowhere said in that affidavit that was not official service. Hence she should not now be heard to say that was not "official" service when her own affidavit appears to disown her. In fact, if she is insistent that she could only file the application after being "officially" served with the minister's decision one wonders why she has filed the present application in the first place when, according to her, she is yet to be "officially" served with the said decision. D E

F Certainly the applicant is not true or honest to herself on this point. In any case, the law is clear, for example, that the application ought to have been filed within a period of six months from the date of the Minister's decision and not from the date of her receipt of the decision. It will follow that in the absence of an application for extension of time to file an application for leave to apply having been filed and granted, the present application is misconceived and incompetent. It is accordingly struck out with costs. G