IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: LUBUVA, J.A., MUNUO, J.A. And NSEKELA, J.A.)

CIVIL APPEAL NO. 121 OF 2005

RAHEL MBUYA ..... APPELLANT

VERSUS

1. MINISTER FOR LABOUR AND YOUTH DEVELOPMENT
2. THE ATTORNEY GENERAL } **..... RESPONDENTS**

(Appeal from the Ruling and Order of the High Court of Tanzania at Dar es Salaam)

(Mushi, J.)

dated the 9th day of September, 2003
in
Miscellaneous Civil Cause No. 11 of 2000

JUDGMENT OF THE COURT

23 April & 22 May, 2008

NSEKELA, J.A.:

This is an appeal against the decision of Mushi, J. who dismissed the appellant's application for a writ of certiorari to quash the decision of the Minister for Labour and Youth Development (the Minister) and for a writ of mandamus to direct the Minister to reinstate the appellant to her former employment as a nurse at

M/s Ebrahim Haji Ithna-Asheri Charitable Hospital. She was dismissed from her employment because of certain breaches of the disciplinary code under the Security of Employment Act, 1964.

The dispute was referred to the Conciliation Board which confirmed her dismissal. Aggrieved by the decision of the Board, the appellant referred the matter to the Minister who reduced the punishment to termination instead of dismissal. The appellant, was still dissatisfied with the Minister's decision and so made an application to the High Court under the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap 316 RE 2002 seeking the prerogative writs of certiorari and mandamus on the grounds that –

"(1) Error of law on the face of the record

(a) The Minister for Labour and Youth Development erred in law when he failed to appreciate the fact that the employer did not, properly argue in whole against the applicant's point and instead, filed a normal letter before the Minister which could not water down the applicant's points.

(b) That the 1st respondent erred in law when he deliberately refused to re-instate the applicant to her job as her being the TUGHE Branch Secretary, could not be dismissed without observing the provisions of section 8(b) of the Security of Employment Act No. 62 of 1964 and he had such powers in law to intervene."

The High Court (Mushi, J.) dismissed the application in the following terms –

> "In conclusion, I am satisfied that this application has no merit. The Minister acted properly within jurisdiction as provided by law, observing the rules of natural justices, (sic) and indeed, with plenty of compassion."

It is against this background that the appellant has preferred the appeal to this Court containing two grounds of appeal. The essence of the appeal as we see it is, **first,** that the learned judge did not give reasons for his decision on some of the grounds of appeal and **secondly,** that the learned judge misinterpreted the law since he took into consideration an irrelevant provision of the law, namely

section 8(b) of the Security of Employment Act, instead of section 9(b) which allegedly applied to her circumstances.

The appellant appeared in person and unrepresented. On the first ground of appeal, she contended that in her reference to the Minister, she had raised eight grounds of complaint. However, the Minister did not deal with all the complaints. She added that her Employer was all out to frustrate her, ostensibly because she was instrumental in the establishment of a trade union branch at the place of work and had been elected Secretary of the branch union to the annoyance of her Employer. As regards the second ground of complaint, she submitted that the learned judge had taken into consideration section 8(b) of the Security of Employment Act instead of section 9(b) which she claimed covered her situation.

Mr. Chidowu, learned Principal State Attorney, represented the respondents. He submitted that the basic question was whether or not the procedural requirements of the law were followed in her dismissal. He contented that all procedures were followed to the letter and so the learned judge could not be faulted in the conclusion that he arrived at. As regards the second issue, the learned Principal

State Attorney submitted that it was not canvassed before the Conciliation Board, or before the Minister.

Before we embark upon an examination of the grounds of appeal, we deem it appropriate first to examine the conditions under which a writ of certiorari can be issued. To this end, we have sought guidance from the case of **Hari Vishnu Kamath** v **Ahmed Ishague** AIR 1955 SC 233, a decision of the Supreme Court of India. Needless to say, the decision is not binding on this Court, but it has persuasive value. After referring to its earlier decisions, the Court stated the character and scope of certiorari in the following terms at page 243 –

> "(i) 'Certiorari' will be issued for correcting errors of jurisdiction as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it.
>
> (ii) 'Certiorari' will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(iii) The Court issuing a writ of 'certiorari' acts in the exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to rehear the case on the evidence, and substitute its own findings in 'certiorari.'

(iv) A writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be on the face of the record."

These propositions of the law were echoed by this Court in the case of **Sanai Murumbe and Another** v **Muhere Chacha** (1990) TLR 54 after considering a number of decisions from England including **Associated Provincial Pictures Houses Limited** v

Wednesbury Corporation [1947] 2 All ER 680; **R** v **Northumberland Compensation Appeal Tribunal** *ex parte* Show [1952] 1 All ER 122; **Anisminic Limited** v **Foreign Compensation Commission** (1969) 1 All ER 208; **Council of Civil Service Unions** v **Minister for the Civil Service** [1984] 3 All ER 935. A decision of an inferior court may be quashed by an order of certiorari where the court acted without jurisdiction or exceeded its jurisdiction or failed to comply with the rules of natural justice in a case where these rules are applicable or the decision of a competent authority is so unreasonable that no reasonable authority could even have come to it or where there is an error of law on the face of the record. The court will not however act as a "court of appeal" from the body concerned. (See also: **Chief Constable of North Wales Police** v **Evans** (1982) 3 All ER 141). The grounds of the application as disclosed in the statement before the High Court was that there was an error of law on the face of the record. These are more or less repeated in the memorandum of appeal before us. The appellant has alleged that the learned judge did not consider all the grounds of complaint which were placed before him. In addition she claimed that the learned judge wrongly took into account section 8(b) instead

of section 9(b) of the Security of Employment Act. Basically, what the appellant is saying is that there was an error of law on the face of the record.

It is trite law that an error is apparent on the face of the record if it can be ascertained merely by examining the record without having recourse to other evidence. An error which has to be established by lengthy and complicated arguments is not an error of law apparent on the face of the record. However, where it is clear that the conclusion of law recorded by an inferior tribunal is based on an obvious misinterpretation of the relevant statutory provision or in ignorance of it, or is expressly founded on reasons which are wrong in law, the tribunal's decision can be quashed by the court through certiorari (See: **Ahmed Ishague's case** supra).

We have hopefully amply set out the principles governing the grant of writ of certiorari. On the facts established, was this a fit case for a writ being issued? We are fully conscious of the fact that the jurisdiction of the court to issue writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. However we wish to point out that the appellant's

contention that the learned judge did not give reasons on some of her grounds of appeal, is wholly unmerited. The learned judge gave reasons, adequately revealing the basis of the decision and expressed specific findings that were critical to the determination of the proceedings. For the avoidance of any lingering doubts, the learned judge stated, inter alia –

> "The Minister was satisfied that the charges that were made against the applicant were proved by the hospital's management and Conciliation Board. The applicant was given **"adequate"** and **"fair hearing"**. The Conciliation Board was duly constituted. Both sides presented their side of the case. Exhibits both documentary and physical were reviewed. It cannot be said by any stretch of imagine (sic) that the principle of natural justice were not observed. I am satisfied that the applicant's claim that the Minister did not consider some of the points she raised in her appeal has no merit."

The appellant has failed to persuade us to fault the decision of the learned judge on this ground.

The second question is, was there an error on the face of the record? The thrust of the complaint is that the learned judge took into consideration section 8(b) instead of section 9(b) of the Security of Employment Act. This meant that the conclusion reached by the learned judge was partly based in disregard of the relevant statutory provision, namely section 9(b). In the course of his judgment, the learned judge pointed out that the Minister had considered and determined three issues including –

> "whether the applicant was protected by the provisions of section 9(b) of the Security of Employment Act."

However, later on in the judgment, the learned judge made reference to section 8(a) instead of section 9(b). The actual provision of the law quoted for consideration in the judgment was in fact section 9(b) as explained before. More importantly however, the decision of the Court was not based on a misapprehension of the law as contended by the appellant.

With respect, we find that the learned judge exercised his discretion judiciously in refusing the appellant's application for

issuance of a writ of certiorari to quash the Minister's decision and for an order of mandamus directing the Minister to re-instate the appellant in her former employment. We find no merit as well in the second ground.

The appeal is accordingly dismissed with costs.

DATED at DAR ES SALAAM this 14th day of May, 2008.

D. Z. LUBUVA
JUSTICE OF APPEAL

E. N. MUNUO
JUSTICE OF APPEAL

H. R. NSEKELA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(F. L. K. WAMBALI)
SENIOR DEPUTY REGISTRAR