

**IN THE COURT OF APPEAL OF TANZANIA
AT TANGA**

(CORAM: MUNUO, J.A., MSOFFE, J. A. And KIMARO, J. A.)

CIVIL APPEAL NO. 31 OF 2009

JOSEPH F. MASSANJA APPELLANT

VERSUS

**1. THE PRINCIPAL SECRETARY,
PRIME MINISTER'S OFFICE,
REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT } RESPONDENTS
2. THE ATTORNEY GENERAL**

**(Appeal from the Ruling and Order of the High Court of Tanzania
at Tanga)**

(Shayo, J.)

**dated the 22nd day of November, 2007
in
Misc. Civil Cause No. 1 of 2007**

RULING OF THE COURT

19 & 22 March, 2010

MSOFFE, J.A.:

At the hearing of the appeal Mr. Stephen Sangawe, learned advocate for the appellant, conceded that the appeal is incompetent for want of leave under **section 5(1)(c)** of the **Appellate Jurisdiction Act** (CAP 141 R.E. 141), hereinafter the **Act**.

Before the High Court at Tanga (Shayo, J.) the appellant applied for leave to file an application for prerogative orders of certiorari, mandamus and prohibition. The application was dismissed mainly on the grounds that the intended application was futile because the appellant's transfer from Korogwe District Council to Hombolo Local Government Institute was administrative and not judicial, that it was a normal transfer from one local government institution to another, and finally that at any rate the transfer was not with different terms and conditions of service.

In a more or less situation, in **Dimon Tanzania Limited v Commissioner General TRA, The Commissioner of Income Tax and The Attorney General**, Civil Appeal No. 32 of 2003 (unreported) this Court referred to **section 17(5)** of the **Law Reform (Fatal Accidents and Miscellaneous) Act**, thus:-

Any person aggrieved by an order made under this section may appeal therefrom to the Court of Appeal

and then at page 5 thereof cited a passage from a decision made by this Court in **The Senate of the University of Dar es Salaam v**

Edmund Aaron Mwasaga and 4 Others, Civil Appeal No. 83 of 1999 (unreported), that:-

To our minds, the orders that fall within the purview of section 17(5) of the Ordinance are those which, as submitted by Mr. Magesa, finally determine an application for the prerogative orders of certiorari one way or the other. The orders that do not touch on the substantive matter provided for under section 17(2) as was the case in the matter before the Principal Judge, are not covered under the provisions of sub-section (5) of section 17 of the Ordinance. In this case, the learned Principal Judge (J.K.) did not make an order refusing or granting an order of certiorari. In other words, the order of 29/4/1999 was not a matter which was decided under section 17(2) of the Ordinance.

With respect, in the matter before us, Shayo, J. determined an application for leave to apply for prerogative orders. He did not finally determine an application for the prerogative orders of certiorari one way or the other. The application before Shayo, J. did not fall within

the purview of **section 17(5)** above. Therefore, this is a matter in which leave was required under **section 5(1)(c)** of the **Act**. In the absence of leave applied for and granted by the High Court, or the Court of Appeal under **paragraph (c)** above, Ms. Angela Temi, learned Senior State Attorney for the respondents, urged us to strike out the appeal.

Following the above concession by Mr. Sangawe and the submission of Ms. Temi, both of which we subscribe and agree to entirely, we hereby strike out the appeal with costs.

DATED at TANGA this 19th day of March, 2010.

E. N. MUNUO
JUSTICE OF APPEAL

J. H. MSOFFE
JUSTICE OF APPEAL

N. P. KIMARO
JUSTICE OF APPEAL

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

