IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MWANGESI, J.A., KWARIKO, J.A., And KEREFU, J.A.)

CIVIL APPEAL NO. 140 OF 2018

EZEKIAH T. OLUOCH.....APPELLANT

VERSUS

THE PERMANENT SECRETARY, PRESIDENT'S OFFICE, PUBLIC SERVICE MANAGEMENT.....1ST RESPONDENT

THE PERMANENT SECRETARY, MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY.....2ND RESPONDENT

THE PERMANENT SECRETARY, PRESIDENT'S OFFICE, REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT.....3RD RESPONDENT

THE SECRETARY, TEACHERS SERVICE COMMISSION.....4TH RESPONDENT

THE ATTORNEY GENERAL.....5TH RESPONDENT

(Appeal from the decision of the High Court of Tanzania, Main Registry at Dar es Salaam)

(Khaday, J.)

dated the 18th day of April, 2018
in
Miscellaneous Civil Cause No. 18 of 2017

JUDGMENT OF THE COURT

7th November, 2019 & 06th January, 2020

KWARIKO, J.A.:

In the High Court of Tanzania at Dar es Salaam, the appellant, Ezekiah T. Oluoch invoked the provisions of section 2(1) and (3) of the Judicature and Application of Laws Act [CAP 358 R.E. 2002], section

19(2)(3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [CAP 310 R.E. 2002] **(the Act)**, Rule 5(1)(2(3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 Government Notice No. 324 of 2014 and section 95 of the Civil Procedure Code [CAP 33 R.E. 2002], and applied for the following orders against the respondents;

(a) ***Certiorary*** *to quash the decisions of the first Respondent embodied in his letter with reference No. CA.87164/01/A/9 dated 16th March, 2017 to wit;*

(i) *Removing the Applicant (appellant) from the Public Service and;*

(ii) *Instructing the Applicant's employer to deregister the Applicant (appellant) from Public Service's register.*

(b) *For an order of* ***Mandamus*** *to compel the first Respondent to determine the application for leave without pay on merit, and;*

(c) *An order of* ***Prohibition*** *to prohibit the second, third and fourth Respondents from removing the name of the Applicant*

(appellant) from the register of public servants under their mandates.

The application which was preferred through a chamber summons was supported by the affidavit and the statement of the appellant.

On the other hand, all the respondents strongly opposed the application vide a counter-affidavit deposed by Lilian Machage, State Attorney. In the end, the High Court dismissed the application for want of merit.

The appellant was discontented by that decision, hence he has come before the Court on appeal. In the memorandum of appeal, the appellant raised fourteen (14) grounds of appeal, which for reasons that will shortly come to light we need not recite all of them herein.

At this juncture, we find it pertinent to reproduce the factual background of the matter leading to this appeal. The appellant, was employed as a secondary school teacher since 1993, thus a member of the Tanzania Teachers Union (Chama cha Walimu Tanzania), popularly known by its acronym, CWT.

In May, 2000, the appellant successfully vied for a post of Deputy General Secretary of the CWT. The tenure of the post was five years. Subsequently, the appellant informed the fourth respondent about the election and he applied for a secondment for a period of five years. However, he was granted leave for three years from 2000 to 2003 on condition that at the expiration of that period he had to choose either to return to the public service as a teacher or remain with the CWT.

Upon expiration of the three years, in September, 2003, the appellant sought for extension of time to cover the remaining two years of his tenure. It was not until November, 2003 when the fourth respondent (the Secretary, Teachers Service Commission), responded to the appellant's application by asking him to choose between working with the CWT or return to his employer. The appellant wrote a letter to express his dissatisfaction with those conditions but there was no response.

As it happened, the appellant, again successfully contested for the same post for the second term for another five years covering the period between 18/5/2005 to 18/5/2010. The appellant informed his employer about the re-election and applied for leave without pay for five years, but

there was no response. The appellant again was re-elected for the third time for the period between 28/5/2010 to 27/7/2015, and he requested for leave without pay.

On 14/3/2011, the appellant received a letter from the first respondent, granting him leave without pay retrospectively with effect from 1/7/2006 to 27/5/2010 and for another term from 28/5/2010 to 27/5/2015. The appellant was given condition that at the expiration of the leave so granted, he would have to choose either to return to his employer or to keep on working with the CWT. His employer, the Secretary, Teachers Service Commission (the fourth respondent) was also instructed to remove the appellant's name from the list of payrolls for public servants. Further, in May, 2015, the appellant was re-elected for the same post and he requested for leave without pay. In October, 2015, the appellant received a letter from the first respondent requiring him to submit previous approvals for leave without pay, which directive he complied with.

In respect of the appellant's request for leave without pay, the first respondent, vide a letter dated 25/11/2015 declined to grant leave without pay for the reason that, the appellant had failed to decide with whom he

wanted to work with between his employer and the CWT with whom he had worked for a longer period.

In the said letter, the appellant was informed that his return to the public service could depend on the availability of the vacancy. The fourth respondent, was also required to proceed with the formalities of removing the appellant's name from the payrolls of the public servants for the duration of the appellant's leave without pay.

In response to the foregoing, the appellant contested the first respondent's decision vide a letter dated 23/4/2016 insisting to be granted leave without pay until May, 2020. It appears that he did not get a response.

Nonetheless, the appellant continued to work with the CWT until 22/2/2017 when he was served with a letter dated 20/2/2017 from the first respondent requiring him to make a decision within seven days between returning to public service or to remain with the CWT. In his reply, the appellant chose none of the two, but reiterated his earlier request to be granted leave without pay.

Subsequently, the appellant received a letter dated 16/3/2017, from the first respondent informing him that, since he had failed to respond to the letter dated 20/2/2017, the government had taken that he had decided to remain outside the public service. For that reason, the fourth respondent was directed to remove the appellant's name from the list of government servants. The appellant contested the decision to remove him from the public service vide a letter dated 22/3/2017.

Moreover, the appellant was served with a letter from the Secretary General of the CWT informing him that, he was suspended from the office pending determination of the dispute between him and the first respondent concerning the status of his employment. At that point the appellant filed the application for prerogative orders against the respondents before the High Court.

At the hearing of the appeal, Mr. Timon Vitalis, learned advocate, appeared for the appellant, while the respondents were represented by Mr. Hangi Chang'a, learned Senior State Attorney, assisted by Mr. Rashid Mohamed, learned State Attorney. Pursuant to Rule 106 (1) of the

Tanzania Court of Appeal Rules, 2009, the appellant filed written submissions on 10/10/2018 in support of the grounds of appeal.

In view of the appellant's written submissions, we think this appeal can be disposed of based on the following four grounds out of the fourteen;

1. *That, the High Court Judge erred in law in deciding that, the appellant did not prove the grounds for judicial review in respect of the prerogative orders of* ***certiorari, mandamus*** *and* ***prohibition****.*

2. *That, the High Court Judge erred in law to decide that the appellant had other judicial remedies to challenge the decision of the first respondent.*

3. *That, the High Court Judge erred in law and in fact by not finding that the denial by the first respondent to grant leave without pay to the appellant was discriminatory.*

4. *That, the High Court Judge erred in law and in fact for not finding that the first respondent's*

refusal to grant leave without pay and the wrongful termination of the appellant amounted to contravention of the right to freedom of association of trade unions specifically the Tanzania Teachers' Union which had exercised its right to elect its leaders including the appellant by virtue of its Constitution.

However, upon taking the stage to expound on the grounds of appeal, Mr. Vitalis first subscribed to the High Court judge's legal findings in relation to the grounds for judicial review. However, he faulted the learned judge for her factual findings that those grounds were not met by the appellant. He submitted that, the application for judicial review was based on three main grounds, namely; the lack of jurisdiction or excess of power on the part of the first respondent, the violation of the principles of natural justice particularly the right to be heard, and the failure by the learned judge to consider the relevant facts.

Submitting on the lack of jurisdiction on the part of the first respondent, Mr. Vitalis argued that, the first respondent is a statutory authority that can only exercise legal powers in respect of teachers under Regulation 37 of the Local Government (Teachers Service Scheme) of 2016

G.N. No. 311 of 2016, read together with section H. 19 (1) (2) of the Standing Orders for Public Service of 2009 (**the Standing Orders**) and Regulation 29 of the Public Service Regulations of 2003 G.N. No 168 of 2003 (**the Public Service Regulations**). He thus argued that, under the provisions of the cited laws, the first respondent is only vested with the power to refuse or grant application for leave without pay but he has no disciplinary power over an employee who is not under his Ministry or office. He was thus of the view that, had the first respondent found the appellant liable for any other proceedings, he ought to have reverted it to his employer for necessary action.

The learned counsel went on to submit that, the first respondent who directed for the removal of the appellant from the register of the public servants, has no such powers. This is because, the first respondent is not the disciplinary authority of the appellant. Mr. Vitalis further submitted that, only the President has powers to remove a public servant from public service in the public interest as provided under section 24 of the Public Service Act [CAP 298 R.E. 2002]. Mr. Vitalis argued that, in the exercise of such powers, the President is required to take into account the constitutional right of the respective employee. He said, in the normal

circumstances, the removal from the public service must be preceded by disciplinary action which lead to termination, dismissal or removal by the President. He contended that, in the case at hand, there was no any disciplinary proceedings conducted against the appellant before he was removed from the public service as required under Regulation 9(2) (3) of the Teachers Service Commission Regulations G.N. No. 308 of 2016 (**the TSC Regulations**) and Regulation 29 of the Public Service Regulations. He added that, the appellant was removed from public service without there being any formal inquiry, as per the dictates of Regulations 15 and 16 of the TSC Regulations.

In respect to the denial of the right to be heard, Mr. Timon Vitalis disagreed with the High Court's interpretation to the effect that the correspondences between the appellant and the first respondent amounted to a hearing. He argued that, in those correspondences the issue was not the removal of the appellant from the public service, but it was whether or not the appellant could be granted leave without pay. He thus was of the view that, the appellant was never asked to show cause as to why he should not be deregistered from the public service register which amounted to denial of the right to be heard. The learned counsel referred

us to Article 13 (6) (a) of the United Republic of Tanzania Constitution, 1977 as amended [CAP 2 R.E. 2002] (**the Constitution**) and the decisions in **Simeon Manyaki v. I.F.M** [1984] T.L.R 304, **Ausdrill Tanzania Ltd v. Mussa Joseph Kumili and Another,** Civil Appeal No. 78 of 2014 (unreported) and **Mbeya-Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma** [2003] T.L.R 251.

In respect of the failure to consider the relevant facts, Mr. Vitalis submitted that, the High Court made a finding that the first respondent considered annexures OL 13, 16, 18, 19 and 20 and concluded that the decision was made on merit. The learned advocate argued that, according to annexure OL 13 the return of the appellant to work was made subject to availability of the vacancy with his employer. He added that, annexure OL 16 was confusing and contradictory. In the upshot he contended that, all three grounds for judicial review were proved, hence the High Court ought to have quashed and set aside the decision made by the first respondent.

Regarding the second ground as to whether there were other remedies available, Mr. Vitalis argued that, the High Court erred to rule out that the appellant ought to channel his grievances before proper forum if

he was aggrieved by the dismissal. He argued that, this matter was not an employment dispute as there was no relationship of such nature between the appellant and the first respondent. He submitted that, the issue whether the matter was labour dispute was decided by Kihiyo, J. as shown at pages 77 to 86 of the record of appeal. That, the matter could not have been taken to the Labour Court as the same has very limited power of review under section 94 of the Employment and Labour Relations Act, 2004. The learned counsel was of the view that, there is no other forum in which the appellant could have taken his grievances than the High Court by way of judicial review.

The appellant complained in the third ground of appeal that, the refusal of the leave without pay was discriminatory against him. It was argued in that respect that, one Yahaya B.K. Msulwa, the General Secretary of the CWT who has served the Union since 1994 to date was granted leave without pay while the appellant who served the Union since 2000 was denied leave for no good reason.

In relation to the fourth ground of appeal, Mr. Vitalis argued that, the grant of leave without pay to the appellant was of general interest to the

teachers and the CWT. He thus contended that, the CWT being a trade union recognized under the Employment and Labour Relations Act (supra), the respondents ought to grant leave without pay to the appellant to be able to represent interest of teachers countrywide who voted him in the said post.

In response to the foregoing, Mr. Chang'a started by opposing the appeal. As regards the first ground, he submitted that, the first respondent only proposed to the relevant authority for the removal of the appellant from the public service. He further contended that, failure by the appellant to opt either to remain as public servant or to work with the CWT, automatically made the first respondent to propose for his deregistration.

Regarding the absence of disciplinary proceedings, the learned Senior State Attorney argued that, due to the nature of the matter, it was proper for the first respondent to order for the deregistration of the appellant without convening any formal proceedings. He argued that, section 24 of the Public Service Act could not apply in this matter because the appellant was not removed from his employment in the public interest.

As regards to the right to be heard, Mr. Chang'a submitted that, the appellant was accorded the opportunity to be heard through communication and correspondence letters. The learned counsel argued that, according to the nature of the complaint, there could not have been proceedings where witnesses could testify and be cross- examined. To fortify his argument, he referred to annexure OL 17 at page 296 of the record of appeal in which he said the appellant gave his defence while responding to the letter from the first respondent. Additionally, he argued that annexure OL 16 was not contradictory and the appellant did not raise this issue during the trial.

In respect of the second ground of appeal, the learned Senior State Attorney supported the decision of High Court when it directed the appellant to opt for other legal remedies than judicial review.

Finally, he submitted that there were no sufficient grounds for judicial review, hence the appeal has no merit. On being probed by the Court, Mr. Chang'a conceded that, the first respondent directed for the deregistration of the appellant from public service register. However, in his oral submission, Mr. Chang'a did not specifically respond to the third and fourth

grounds of appeal. Indeed, it is unfortunate that the respondents did not lodge written submission in response to the appellant's written submission.

In his rejoinder, Mr. Vitalis insisted that, the first respondent exceeded his powers when he ordered for the deregistration of the appellant, because his powers should have ended to granting leave without pay.

We have considered the grounds of appeal and the submissions from the counsel for the parties. In our deliberations, we will deal with the grounds of appeal in the manner they have been grouped and argued by the learned counsel.

The first ground is whether the appellant proved the grounds for judicial review to justify the High Court to issue the writs he had prayed for. In Tanzania the High Court is mandated to entertain matters of judicial review in respect of the writs of *certiorari, mandamus,* and *prohibition* which are provided under sections 17, 18 and 19 of the Act. Section 17 (2) thereof provides that: -

> *In any case where the High Court would but for sub section (1) have had jurisdiction to order the issue*

of a writ of mandamus requiring any act to be done or a writ of prohibition prohibiting any proceedings or matter, or a writ of certiorari removing any proceedings or matter into the High Court for any purpose, the Court may make an order requiring the act to be done or prohibiting or removing the proceedings or matter, as the case may be.

As intimated earlier, the appellant after receiving the letter from the first respondent removing him from his employment, he decided to challenge the same through judicial review.

For easy of reference we find it apposite at this point to reproduce the letter by the first respondent to the appellant dated 16/3/2017 which by and large sparked these proceedings thus: -

"YAH: KUFANYA UAMUZI BAADA YA KUTORIDHIWA KWA NYONGEZA YA LIKIZO BILA MALIPO NA KUTAKIWA KUREJEA KWA MWAJIRI

Rejea barua yangu yenye Kumb.Na.CB.87/164/01 ya tarehe 20 Februari, 2017.

2. *Katika barua yangu tajwa hapo juu ulitakiwa kuwasilisha taarifa kuhusu uamuzi wako ama kurejea Serikalini au kuajiriwa moja kwa moja na Chama cha Walimu Tanzania (CWT). Hadi tarehe ya barua hii, ikiwa ni zaidi ya siku ishirini na tatu (23) tangu ulipotakiwa kufanya hivyo, Ofisi yangu haijapokea maelezo yoyote kutoka kwako.*

3. *Ninapenda kukuarifu kuwa kutokana na kushindwa kwako kutekeleza maelekezo niliyotoa katika barua yangu niliyoitaja hapa juu; Serikali inatafsiri kuwa umeamua kuendelea kuwa nje ya Utumishi wa Umma.*

4. *Kwa sababu hiyo mwajiri wako wa awali anaelekezwa kuondoa jina lako kwenye orodha ya watumishi wake kuanzia tarehe ya barua hii kwa kuwa wewe sio tena mtumishi wa Umma.*

Dkt. Laurean J.P. Ndumbaro

KATIBU MKUU (UTUMISHI)"

As shown above, the first respondent directed for the removal of the appellant from the public service after the appellant failed to abide to the

conditions given. At this juncture, we think it is appropriate to refer to the decision of the Court in **Sanai Murumbe and Another v. Muhere Chacha** [1990] T.L.R 54 in which the conditions were outlined which ought to be proved for one to succeed in an application for judicial review. It was held thus: -

> *"The High Court is entitled to investigate the proceedings of a lower court or tribunal or a public authority on any of the following grounds, apparent on the record. One, that the subordinate court or tribunal or public authority has taken into account matters which it ought not to have taken into account. Two, that the court or tribunal or public authority has not taken into account matters which it ought to have taken into account. Three, lack or excess of jurisdiction by the lower court. Four, that the conclusion arrived at is so unreasonable that no reasonable authority could ever come to it. Five, rules of natural justice have been violated. Six, illegality of procedure or decision".*

On the same matter see also the case of **Rahel Mbuya v. Minister for Labour and Youth Development and Another,** Civil Appeal No. 121 of 2005 (unreported).

The question which follows now is whether the appellant proved any of the conditions enumerated above against the first respondent. First, the appellant complained that, the first respondent exceeded his powers when he ordered for his removal from the public service. We have gone through the correspondences between the appellant and the first respondent. What we have gathered is that, they all related to the issue of grant and extension of leave without pay to the appellant. As rightly argued by Mr. Vitalis, the first respondent can exercise legal powers in respect of teachers under Regulation 37 of the Local Government (Teachers Service Scheme) of 2016 G.N. No. 311 of 2016, read together with paragraph H. 19 (1) (2) of the Standing Orders and Regulation 29 of the Public Service Regulations. Regulation 37 of G.N. 311 of 2016 provides that: -

> *(1) The Permanent Secretary (Establishment) may grant a leave without pay to a teacher provided he is satisfied that it is in the public interest to do so.*

(2) *Subject to sub-clause (1), the grant of such leave shall take into consideration the government policy.*

(3) *The application for leave without pay shall be made through the employer who shall forward it to the Permanent Secretary (Establishment) with his recommendations.*

It was therefore under this provisions that the appellant requested for leave without pay from the first respondent. Section H. 19 (1) of the Standing Orders also provides that: -

> *It is the Government's policy not to grant leave without pay to employees. However, the Permanent Secretary (Establishment) may grant leave without pay to public servants provided that he is satisfied that it is for public interest to do so. Such approval shall be obtained before a public servant goes on leave without pay.*

It is clear from the above provisions that, to remove or order for removal of a teacher from public service is not among the first respondent's legal powers. However, teachers may be removed from public

service by the President as provided under Regulation 29 (1) of the Public Service Regulations that: -

> *Where the appointing authority is of the view that the President should be invited in the exercise of the powers conferred upon him by sub– section (1) of section 24 of the Act, the appointing authority shall, after consultation with the respective Minister, furnish to the Chief Secretary through the Permanent Secretary (Establishments) particulars of the grounds warranting the exercise of the President.*

According to this provision, it is only through the appointing authority that the President can be invited to remove a teacher from public service in the public interest. The duty of the first respondent in this respect is to forward the grounds from the Minister responsible for teachers for the removal of a particular public servant to the Chief Secretary. Therefore, it is only the President who has powers to remove a public servant from public service in the public interest. Section 24 (1) of the Public Service Act (supra) provides that: -

> *The President may remove any public servant from the service of the Republic if the President*

considers it in the public interest so to do. Except in the case of removal of a judge or other judicial officers, the procedure for the exercise of these powers shall be provided for in the Regulations.

Further, the first respondent is neither the appointing nor the disciplinary authority in respect of teachers. This is because, sections 3 and 5 (c) of the TSC Act and Regulation 2 of the TSC Regulations provide that the Commission is the appointing as well as the disciplinary authority in respect of teachers. Section 3 provides that;

Appointing authority" in relation to teachers, means the Teachers Service Commission.

And section 5 (c) thereof provides that: -

The function of the Commission shall be to-

(d) Appoint, promote and discipline teachers.

Moreover, Regulation 12 of the TSC Regulations provides that: -

(1) The Commission shall, subject to section 5(c) of the Act, have mandate of disciplinary control in respect of primary and secondary

schools' teachers employed in the public service.

(2) The District Committee shall be the disciplinary authority for any offence that warrants the following action against a teacher of that respective district-

(a) dismissal;

(b) reduction in rank;

(c) reduction in salary; and

(d) stoppage of an increment.

According to the cited provision, it is the District Committee that have powers of dismissal of a primary or secondary school teacher. The dismissal should be reached upon disciplinary proceedings being conducted as provided for under Regulations 13 and 15 of the TSC Regulations. Regulation 15 (1) categorically provides that: -

Formal proceedings shall not be instituted against a teacher in the service, unless he has been served with a charge or charges stating the nature of the offence, which he is alleged to have committed.

Therefore, the first respondent usurped powers he did not have when he directed for the removal of the appellant from the public service. Had he had any reason to believe that the appellant had committed any offence, he should have reported the same to the relevant authority for necessary action.

From the foregoing, we are of the settled view that, the first respondent exceeded his powers and had no jurisdiction to order for the removal of the appellant from public service.

The above conclusion brings us to the second condition for judicial review complained of by the appellant; that is, there was violation of the rules of natural justice. It is clear from the facts of the case that, the appellant was not accorded the right to be heard before the first respondent ordered for his deregistration from the public service register. The appellant was not served with a charge stating the nature of the offence and required him to defend his case according to the law. The right to be heard has been emphasized by the Court in various decisions. Some of which are; **National Housing Corporation v. Tanzania Shoes**

and Others [1995] T.L.R 251, **Mbeya- Rukwa Auto Parts & Transport Limited** (supra), **Margwe Erro and Two Others v. Moshi Bahalulu, Civil Appeal No 111 of 2014** (unreported) to mention but a few. In **Margwe Erro and Two Others** (supra), the Court quoted the decision in **Abbas Sherally and Another v. Abdul S.H.M. Fazalboy,** Civil Application No. 33 of 2002 (unreported), where it was held that;

> *"The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice."*

The right to be heard is also safeguarded in the Constitution. Article 13 (6) (a) of the Constitution provides in the official version thus: -

> *(6) Kwa madhumuni ya kuhakikisha usawa mbele ya sheria, Mamlaka ya Nchi itaweka taratibu zinazofaa au zinazozingatia misingi kwamba–*
>
> *(a) wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi wa mahakama au*

chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu, na pia haki ya kukata rufaa au kupata nafuu nyingine ya kisheria kutokana na maamuzi ya mahakama au chombo hicho kinginecho kinachohusika.

Literally translated, the sub-article in English reads: -

(6) To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely:

(a) When the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned.

As regards the third condition complained of by the appellant, and from what we have discussed above, it is clear that had the High Court considered the communication and correspondence letters between the appellant, the first and the fourth respondents, it would have found that the first respondent had no legal powers or justification at all, to order for

the deregistration of the appellant from the public service and that the appellant had proved the first and second conditions for judicial review.

In the circumstances of what we have discussed above, we have no doubt that the first ground of appeal has merit.

As regards to the second ground as to whether there were other judicial remedies available to challenge the decision of the first respondent, our answer is that the route taken by the appellant to file judicial review in the High Court was the proper one. Sections 17, 18 and 19 of the Act, gives the High Court mandate to entertain matters of judicial review.

With regard to the third ground, the appellant's complaint is that, he was discriminated when his request for leave without pay was refused, while that of Yahaya Msulwa, his fellow employee was granted. On our part, we are in agreement with the High Court judge that, there are no material facts concerning the said Yahaya Msulwa who was allegedly granted leave without pay for us to compare with the appellant's application. As such, the first respondent's replies to the appellant's requests in respect of leave without pay contain nothing with regard to the said Yahaya Msulwa. We must therefore emphasize that, each situation

must be decided on its own merit. In the event, this ground too is unmerited.

Lastly, in the fourth ground, what we can say about the appellant's complaint in relation to the refusal by the first respondent to grant him leave without pay is that, leave is granted at the discretion of the first respondent. Pursuant to section H.19 of the Standing Orders we cited earlier, it is not a public policy to grant leave without pay to employees. However, the first respondent is given discretion to grant that leave upon being satisfied that it is in the public interest to do so. As rightly decided by the High Court, we have not seen any provision of law which gives recourse to an employee to go to court to challenge the refusal of the leave. This ground fails.

Consequently, because the first respondent exceeded his powers when he ordered for the deregistration of the appellant from the public service, we issue *certiorari* to quash the decision of the first respondent embodied in his letter dated 16/3/2017. However, in the circumstances, we refrain to grant the prerogative orders of *prohibition* and *mandamus* which were prayed for by the appellant, but we order proper procedure to be

followed by the relevant authority to determine the fate of employment of the appellant.

Finally, this appeal is allowed to the extent shown above with no order as to costs.

DATED at **DAR ES SALAAM** this 23rd day of December, 2019.

S. S. MWANGESI
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

The Judgment delivered on this 6th day of January, 2020 in the presence of Mr. Timon Vitalis, learned advocate for the appellant and Mr. Hangi Chang'a, Senior State Attorney for the respondents, is hereby certified as a true copy of the original.

B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL