IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM MAIN REGISTRY

AT DAR ES SALAAM

MISC. CIVIL CAUSE NO.11/1999

(1) TUICO - OTTU UNION..... APPLICANT

(2) AUGUSTINE CELESTINE

VERSUS

(1) NBC (1997) LTD..... 1ST RESPONDENT

(2) PSRC..... 2ND RESPONDENT

(3) ATTORNEY GENERAL.... 3RD RESPONDENT

RULING

MAPIGANO, J:

The preliminary point of law which has been taken by the Attorney General in opposition to the applicants' chamber summons is an interesting one. In the chamber summons the applicants seek an order for interim relief pending the hearing of an appeal which they intend to prefer to the Court of Appeal against this Court's refusal to grant leave to them to apply for prerogative orders. The Attorney General contends that having refused such leave this Court is functus officio and has, therefore, no jurisdiction to grant any form of interim relief.

To start with, I will say a few words about some collateral matters which have cropped up during counsel's arguments. First, Professor Shivji, counsel for the applicants, is right in saying that the source of the jurisdiction of this court to entertain

applications for prerogative orders is the Judicature and Application of Laws Ordinance, Cap 453, which imports into Tanzania the substance of the common law, doctrines of equity and statutes of general Application in force in England on the reception date, i.e. 22/7/1920. He is also right in saying that in regard to procedure such applications are not governed by the provisions of the Civil Procedure Code or the Government Proceedings Act.

Secondly, there is no written law which specifically confers power on this Court to grant interim injunctions pending appeal to the Court of Appeal, and where the Court has granted such reliefs it has done so by invoking its inherent jurisdiction.

Thirdly, this Court has consistently held that it has also inherent jurisdiction to grant injunctive relief pending the hearing of the Application for leave to move for judicial review and pending the disposal of the substantive application.

The question now before me is whether this Court has also jurisdiction to grant interim reliefs pending appeal to the Court of Appeal where leave to move for judicial review has been withheld. The Attorney General, as already mentioned, asserts that the Court does not possess such jurisdiction. It is said by Mr Kamba, on his behalf, that where the Court has refused such leave it becomes functus officio and has no jurisdiction to grant any form of interim relief. Reliance is placed upon the Supreme Court Practice [1993], para 53/1-14/24, which was cited with approval by the House of Lords in the case of **M v Home Office and**

another, [1993] 3 All ER S 37 at 565; and on the comment made by the learned authors of **Mulla** on the Indian Code of Civil Procedure, 14th ed. p.2136 para 3. Reference has also been made to the decision of Samatta, JK, as he then was, in the case of Vidyadhar G. Chavda v The Director of Immigration Services and two others Misc. Civ. Cause No.5 of 1995 of the High Court Main Registry. I should however point out, with respect to Mr Kamba, that the issue before the learned judge in that case was whether this Court has power to grant an interlocutory injunction before hearing an application for leave to apply for a prerogative order. It is true that at one point in the course of his ruling the judge happened to quote the paragraph in the SCP. [1993]. But I think there is no one except the judge himself who knows for certain whether he subscribed to the view that the Court has also the power to grant interim reliefs pending appeal to the Court of Appeal once it has refused leave to move for judicial review.

On his part Professor Shivji takes the opposite view. It is his contention that the Court is not functus officio and that in appropriate circumstances the Court can properly resort to its inherent jurisdiction and grant interim reliefs even where it has refused leave to apply for the orders. He has cited several authorities to support his proposition.

Professor Shivji submits that in so far as the grant of interim reliefs is concerned there is no distinction in principle between an application for leave to move for judicial review and

an appeal against a refusal of such leave. In each case, he says, the purpose is to preserve the status quo in order to ensure that if the application for the orders is granted, or if the appeal succeeds, the applicant or the appellant, as the case may be, does not obtain a mere barren success.

It should be realized that all the cases cited by Professor Shivji were civil proceedings. It seems to me that there is no judicial pronouncement on the point raised by the Attorney General in Tanzania and that, therefore, the present case is one of first impression. I have given the matter sufficient consideration and I have preferred to go with what the SCP (1993) says, namely, that if a judge at first instance has refused leave to move to judicial review, he is functus officio and has no jurisdiction to grant any form of interim relief.

I have taken the view that when a judge in the High Court refuses leave to apply for prerogative orders, he thereby throws the matter out of the Court. It is true that the matter can be taken to the Court of ~~Appeal~~ Appeal. But where an applicant goes to the Court of Appeal, he is, as the SCP (1993) says, renewing the application for leave to move for judicial review, and I need not add that that Court is vested with jurisdiction to deal with the matter.

In the event, I have to sustain the Attorney General's objection and strike out the chamber summons. It is so ordered. I have to confess that it has not been easy to come to that decision in complete certitude. Indeed, more often than not,

that is what happens when a court is faced with a difficult case of first impression.

Delivered.

Dr. Wambali (for Prof. Shivji) for Applicants

Mr Mujulizi for 1st and 2nd Respondents.

Mr Ngwembe for the 3rd Respondent.

D.P. Mapigano

JUDGE.

25/6/99