

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

MISCELLANEOUS CIVIL CAUSE NO. 75 OF 2004

**ELISHA MARWA NYAMUHANGAAPPLICANTS
& 59 OTHERS**

VERSUS

**1) COMMISSION FOR HUMAN
RIGHTS AND GOOD GOVERNANCE } RESPONDENTS
2) THE ATTORNEY GENERAL }**

R U L I N G

A.Shangwa,J.

This is a preliminary objection which has been raised by the Respondents against the Applicants' application for leave to file an application for the order of certiorari to remove into this Court and quash the proceedings and decision of the commission for Human Rights and Good Governance; and the decision of the chairman of the commission and for an order of mandamus to compel the Chairman of the

Commission to appoint a new Panel of commissioners to hear and determine the Applicants' complaint No. UB/S/127/2003/ Madini.

There are six points of objection which have been raised by the Respondents against the Applicants' application. In order to dispose of this objection, I will only deal with the second point of objection which is a most crucial point in this matter. This point reads as follows and I quote it herein below :

" The Honourable Court has no jurisdiction to deal with this Application as it is filed contrary to S.17 (3) of the Commission for Human Rights and Good Governance Act, 2001". Cap 391.

Section 17(3) of the Commission for Human Rights and Good Governance Act, 2001 Cap.391 provides as follows :

"No inquiry, proceeding or process of the commission shall be invalid on the grounds only of any error or irregularity of form and, except on the ground of lack of jurisdiction, no inquiry, proceeding, process or report of the commission shall be liable to be challenged, reviewed, quashed or called in question in any Court".

In the plain meaning of the above quoted section, it is clear that the Court is precluded from calling in question or reviewing the enquiry, proceeding or process of the Commission for Human Rights and Good Governance and quashing the same except on the ground of lack of jurisdiction.

Indeed, the Applicants' application for leave to apply for the prerogative order of Certiorari to remove into this Court and quash the proceedings and decision of the Commission

for Human Rights and Good Governance dated 5/5/2004; and the decision of the chairman of the Commission dated 3rd August, 2004 is not in conformity with the clear provisions of S.17(3) of the Commission for Human Rights and Good governance Act, 2001.

Similarly, the Applicants' application for leave to apply for the prerogative order of mandamus to compel the chairman of the Commission to appoint a new panel of commissioners to hear and determine the aforesaid complaint is not in conformity with the clear provisions of the said Act.

I find that the learned State Attorney's contention at page 7 of her written submissions where she states that this Court has no jurisdiction to quash the relevant proceedings and decisions of the Commission for Human Rights and Good Governance is quite correct.

As the parties to this application are all aware, the process of inquiring into complaint No. UB/S/127/2003/Madini filed by the Applicants' in the commission for Human Rights and Good Governance is not yet complete. It is still pending before commissioner Jecha S. Jecha and Safia M. Khamis who dismissed Mr. Tundu Lissu's application made on behalf of his clients to cause the Respondents to be arrested and prosecuted for contempt of the commission's order made on 24/11/2003 and for intimidating his clients.

Some of the Respondents whom MR. Tundu Lissu wanted to be arrested and prosecuted are as follows:

1. The Regional Commissioner, Mara Region,
Balozi Nimrod Lugoe.
2. The Regional Police Commander, Mara
Region, Paul Ntobi.

3. The District Commissioner, Tarime, Paschal Mabiti.
4. The Officer Commanding District, Tarime, Angulile Mwambelo and the Public Relations Officer of AMGM John Bosco Mbusiro.

It is common knowledge that there was a **breakdown** of the hearing of the main complaint when Mr. Tundu Lissu suddenly informed Commissioners Jecha S.Jecha and Safia M. Khamis that he could not proceed to cross examine the Respondents due to the fact that he had raised serious allegations against them to the chairman of the commission and that he was waiting for the reply from him.

In fact, Mr. Tundu Lissu lodged a formal appeal to the Chairman of the commission which was objected to by DR. Alex Nguluma, Advocate and Mr. Mwaimu, State Attorney who appeared for the Respondents before the commission

and struck out by the Chairman of the said commission on 3/8/2004. After striking it out, the Chairman directed that the matter should revert to commissioners **khamis** and **Jecha** for continuation from where they had stopped.

In the light of S.17(3) of the Act, which precludes the Court from calling in question or reviewing the proceeding or process of the commission, I hold that this Court cannot by any means quash the decision of the commissioners' in which the Applicants' application for a notice to show cause was dismissed; and it cannot quash the chairman's decision in which the Applicants' appeal was struck out. I hold also that this Court cannot by any means compel the chairman to appoint a new panel of commissioners to continue with the hearing of the Applicants' main complaint from where it stopped. As such, it will be of no use for me to grant leave to the Applicants to apply for the prerogative order of certiorari to quash the commissioners' and the chairman's

aforesaid decisions and to apply for the prerogative order of mandamus to compel the Chairman to appoint a new panel of commissioners for the aforesaid purpose.

For the reasons I have given, I hereby uphold the Respondents' 2nd point of preliminary objection and dismiss the Applicants' application with costs.

A.Shangwa

JUDGE

10/11/2005

Delivered in Court this 10th day of November, 2005.

A. Shangwa

JUDGE

10/11/2005