

**IN THE HIGH COURT OF TANZANIA  
AT IRINGA**

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**MISCELLANEOUS CIVIL CAUSE NO. 1 OF 2015**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF  
CERTIORARI AND MANDAMUS**

**BETWEEN**

**MOHAMED OMARY MOHAMED (EX.E4699 CPL) ..... APPLICANT**

**VERSUS**

<b>1. THE INSPECTOR GENERAL OF POLICE</b>	}	<b>..... RESPONDENTS</b>
<b>2. THE ATTORNEY GENERAL</b>		

06/05/2016 & 12/05/2016

**RULING**

Kihwelo J.

The applicant came before this court armed with a Chamber Summons supported by an affidavit seeking to move this Honorable Court under Section 17(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap 310 of the RE 2002. In essence the applicant sought to move the Honourable Court to grant leave to apply for prerogative orders of *Certiorari*.

According to the chamber summons the applicant prayed for the following orders:-

- 1. That this Honourable Court be pleased to grant leave to the applicant to apply for orders of Certiorari to quash the decision of the Inspector General of Police dismissing the Applicant from employment contrary to the laws and principles of natural justice.*
- 2. That cost of the application be provided.*
- 3. Any other order or order(s) as it may deem just and equitable to grant by this Honourable Court.*

The application was set for hearing before me on 17<sup>th</sup> March, 2016 when Mr. Mwenyeheri Aristaric informed this honourable court that they took up a point of preliminary whose notice was filed before this court on 22<sup>nd</sup> February, 2016.

According to the notice of preliminary objection the respondents raised that;

*" The application is fatally defective for wrong citation of the enabling provision of law".*

When the matter was set for hearing of the preliminary objection the applicant appeared in person and fended for himself, whereas the respondents had the services of Ms. Hope Charles Masambu, learned State Attorney.

Arguing in support of the preliminary objection Ms. Masambu was very brief and to the point. She forcefully submitted that the applicant did not properly move the court to grant the sought orders. Ms. Masambu lucidly submitted that the applicant has cited the provision of Section 17(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap 310 of the RE 2002 as enabling provision while in essence the proper provision is Section 19(2) and (3) of the said law. According to Ms. Masambu the provision of Section 19(2) and (3) provides for the manner upon which an application for prerogative orders may be preferred before the court and that pursuant to Section 19 rules were made to provide for guidance on how the application can be made.

Ms. Masambu drew the attention of this court to the Law Reform (Fatal Accidents and Miscellaneous Provisions), (Judicial Review Procedure

and Fees) Rules, 2014 GN No. 324 published on 5<sup>th</sup> September, 2014. To further buttress her point she cited the case of **Hassan Kitwara V The Permanent Secretary, Ministry of Lands and Human Settlement Development and another**, Miscellaneous Land Case Application No. 6 of 2009, High Court of Tanzania, Land Division at Dar es Salaam (unreported) in which Mziray J (as he then was) made it clear that the provision of Section 17(2) of Cap 310 is not applicable in applications like the one before the court and that the relevant provision is Section 19(2) and (3) of Cap 310. She finally prayed that the application should be struck out with costs.

In reply the respondent was equally very brief he merely alluded that he believed that the cited provision of the law was appropriate to move the court to grant the sought orders.

I have painstakingly followed the submission by Ms. Hope Charles Masambu, learned State Attorney and I have also considered the brief reply by the applicant and in my considered opinion the issue which cries for my consideration is whether the court has been properly moved.

The applicant has cited Section 17(2) of Cap 310 RE 2002 in seeking to move this court to grant leave to apply for the prerogative orders of *certiorari*. Ms. Masambu has convincingly argued that the proper provision is Section 19(2) and (3) of Cap 310.

In my opinion there is considerable merit in Ms. Masambu's submission in that Section 19(2) and (3) is the most relevant and appropriate provision when it comes to application for leave to apply for prerogative orders. It is on those bases that the Chief Justice under Section 19(1) promulgated, The Law Reform (Fatal Accidents and Miscellaneous Provisions), (Judicial Review Procedure and Fees) Rules, 2014 GN No. 324 published on 5<sup>th</sup> September, 2014 which elaborates in details how the application for leave will be made and goes further to prescribe under Rule 5(3) Form A which is set out in the First Schedule to the Rules and which is the format of the application for leave.

As can be gleaned from the law that is Cap 310 RE 2002 when read together with the Rules GN No. 324 the applicant did not cite the proper provision of the law in seeking to move the court.

This Court had already made it clear in the case of **Hassan Kitwara** (supra) that Section 19(2) and (3) of Cap 310 RE 2002 is the enabling provision in application of this nature and that Section 17(2) can not be used to determine application of this nature.

The applicability of the provision of Section 17(2) of Cap 310 was under further scrutiny following the reasoning of the Court of Appeal of Tanzania in **Attorney General V Wilfred Onyango Mganyi @ Dadii & 11 Others**, Criminal Appeal No. 276 of 2006, (unreported) in which the Court of Appeal of Tanzania seating at Arusha held that;

*"--- It appears to us obvious that Section 17 of Cap 310 apart from prohibiting the High Court from issuing prerogative writs of mandamus, prohibition and certiorari, it provides for the jurisdiction of the High Court to issue the orders of mandamus, prohibition and*


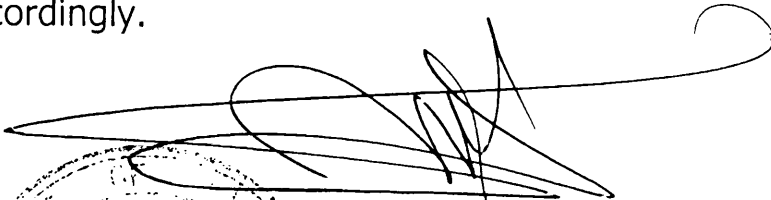
*certiorari, henceforth to be referred to only as the orders. It also provides for a right of appeal by an aggrieved party where an application for the orders is either granted or refused. It does not deal with applications for leave to apply for the orders ---”*

As rightly pointed out in the instant case it is apparent the court was not properly moved. The law is clear that wrong citation of the law renders the application incompetent. See the cases of **Edward Bachwa & 3 Others V The Attorney General & Another**, Civil Application No. 128 of 2008 and **Chama cha Walimu Tanzania V The Attorney General**, Civil Application No. 151 of 2008 (both unreported).

It follows therefore, that since the applicant in this matter wrongly relied on Section 17(2) of Cap 310 in moving the court to grant leave to apply for prerogative orders, the application is incompetent for wrong citation, the consequence of which is to, and I hereby uphold the preliminary objection and strike out the application.

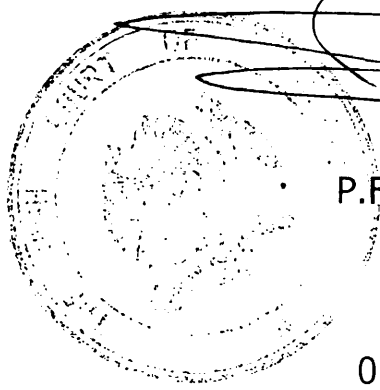

The Court's advice to the applicant however, is that if he still wishes to pursue the intended application, he should, subject to the law of limitation, reinitiate the process.

Order accordingly.



P.F. KIHWELO  
JUDGE  
06/05/2016

Ruling to be delivered by the Deputy Registrar on 12/05/2016.



P.F. KIHWELO  
JUDGE  
06/05/2016