

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 8 OF 2018
IN THE MATTER OF AN APPLICATION FOR CERTIORARI AND MANDAMUS
AND**

**IN THE MATTER OF THE DECISION BY THE SPEAKER OF THE NATIONAL
ASSEMBLY OF THE UNITED REPUBLIC OF TANZANIA TO REPLACE THE
APPLICANTS AS MEMBERS OF PARLIAMENT (SPECIAL SEATS, CIVIC UNITED
FRONT) WITH THE 3RD -10TH RESPONDENTS (NECESSARY PARTIES HEREIN
AND**

**IN THE MATTER OF THE DECISION BY THE SPEAKER OF THE NATIONAL
ASSEMBLY OF THE UNITED REPUBLIC OF TANZANIA TO REFUSE TO
REINSTATE THE APPLICANTS HEREIN CONSEQUENT TO THIS COURT'S
RULING DATED 10TH NOVEMBER 2017 SUSPENDING THE EXPULSION OF THE
SAID APPLICANTS FROM THE CIVIL UNITED FRONT (CUF) PARTY**

BETWEEN

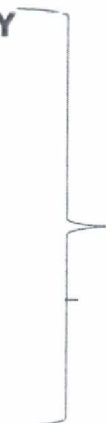
1. MIZA BAKARI HAJI
2. SAVERINA SILVANUS MWIJAGE
3. SALMA MOHAMED MWASA
4. RAISA ABDALLAH MUSSA
5. RIZIKI SHAHARI MNGWALI
6. HADIJA SALUM ALLY AL-QASSMY
7. HALIMA ALI MOHAMED
8. SAUMU HERI SAKALA



APPLICANTS

VERSUS

1. THE CLERK OF THE NATIONAL ASSEMBLY
2. THE ATTORNEY GENERAL
3. RUKIA MOHAMED KASSIM
4. SHAMSIA AZIZ MTAMBA
5. KIZA HUSSEIN MAYEYE
6. ZAINABU MDOLWA AMIR
7. HINDU HAMIS MWENDA
8. SONIA JUMAA MAGOGO
9. ALFREDINA APOLINARY KAHIGI
10. NURU AWADHI BAFADHILI



RESPONDENTS

RULING

MWANDAMBO, J

Originally, the Court was moved by the 1st and 2nd Respondents to dismiss the Applicants application for leave to apply for judicial review on account of time bar and lack of jurisdiction. The Court received submissions for and against the two preliminary objections from the Hon. Attorney General for the 1st and 2nd Respondents as well as Mr. Peter Kibatata, learned Advocate for the Applicants and reserved its ruling today. In the course of composition of the ruling, I realized that a statement was not accompanied to the chamber summons as required by rule 5 (2) (a) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN 234 of 2014 (the Rules) read together with form 'A' of the schedule to the Rules. In that regard, I invited the learned counsel to address the Court on the effect (if any) of noncompliance with Rule 5 (2) (a) of the Rules to the application.

For a better appreciation of the issue involved, a brief background to the application will be necessary. On 10th November, 2017 this Court determined an application in Miscellaneous Civil Application No. 479 of 2017 making several orders including suspension of the decision by the Civic United Front (CUF) to expel the Applicants from the said party pending determination of Civil Case No. 143 of 2017 challenging the said expulsions. It is common ground that by reason of the Applicants' expulsion from their party the Applicants who were members of Parliament under special category lost their seats and later on replaced by the 3rd to 10th Respondents. Armed with the Court's ruling, the Applicants sought to be reinstated into their seats in Parliament but to no avail for, the first Respondent found nothing in the Courts ruling ordering their reinstatement in Parliament. This he did through ~~letter Ref. No. CEB 77/155/01 dated 29th~~ November, 2017 annexed to the affidavit marked TAL – 7. By reason of the refusal by the 1st Respondent, the Applicants sought to remove into the High Court by way of prerogative orders of certiorari and mandamus in the manner

set out in the chamber summons. The Applicant filed their application on 13th March, 2018.

Commenting on the issue raised by the Court, Mr. Peter Kibatata, learned Advocate who was assisted by Mr. Omary Msemo readily conceded that the statement was not "**annexed**" to the chamber summons. However, the learned Advocate took the view that failure to "annex" the statement was innocuous to the application because the same is not a central document to the same rather the chamber summons and the affidavit. According to the learned Advocate, the reliefs are contained in the chamber summons supported by grounds set forth in an affidavit and annexures thereto and so where a statement is not "annexed", the Court can order it to be filed at any time.

For his part Mr. Mashaka Ngole, learned Advocate for the 3rd – 10th Respondents urged the Court to hold that the non-compliance with rule 5 (2) (a) of the Rules is fatal to the application for it is the statement rather than the chamber summons and affidavit which sets out grounds and the reliefs in support of the application. The learned Advocate submitted further that a look at form "A" of the schedule to the Rules shows that a statement is a necessary document to the application and since none was so accompanied, the application should be struck out for being incompetent.

My starting point in the determination of the issue is rule 5 (2) of the Rules which stipulates:

- (2) An application for leave under sub-rule (1) shall be made ex-parte to a judge in chambers and be accompanied by:-*
- (a) A statement providing for the name and description of the Applicant.*
- ~~(b) The relief sought~~*
- (c) The grounds on which the relief is sought and,*
- (d) Affidavits verifying the facts relied on.*

It will be clear from the foregoing that the Rule requires that a chamber summons must be accompanied by a statement which as submitted by Mr. Ngole learned Advocate, should contain the reliefs and grounds relied upon. It is clear from rule 5 (2) (d) that an affidavit to be accompanied to the chamber summons is merely for the purpose of verifying the facts relied in the statement rather than containing grounds in support of the application as Mr. Kibatata would have me hold. With the foregoing, there is hardly any dispute that a statement is not a mere annexure to an affidavit but a primary document accompanying the chamber summons and this is made even more clearer by form 'A' of the schedule to the Rules. The relevant part in the schedule states:-

"...this application is brought at the instance of and is supported by the statement of the Applicant and the affidavit(s) of ..."

Contrary to the foregoing, the chamber summons indicates that the application is supported by the joint affidavits rather than the same verifying the facts relied in the statement in support of the application. If I may go further, the necessity of the statement is made even more obvious in rule 8 (1) (a) of the Rules which provides:-

"8 (1) where a leave to apply for judicial review has been granted, the application shall be made:-

*(a) by way of chamber summons supported by an affidavit and **the statement in respect of which leave was granted** (emphasis added).*

My understanding of the foregoing rule is that a statement must have been accompanied the application for leave to apply for judicial review as it were ~~and same must support an application for a substantive application for judicial review.~~ In the circumstances, since the application is not accompanied by a statement as required by Rule 5 (2) (a) of the Rules read together with form 'A' of the schedule to the Rules, I would agree with Mr. Ngole, learned Advocate

that the omission is fatal rendering the application incompetent. Having held that the application is incompetent I cannot but accede to the prayer made by the learned Advocate for the 3rd – 10th Respondents.

In the upshot, the application is hereby struck out for being incompetent. Since the issue was raised by the Court suo motu, there will be no order as to costs. Order accordingly.



L.J.S MWANDAMBO

JUDGE

31/07/2018