

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL CAUSE NO. 15 OF 2018

**In the Matter of an Application for Leave to apply for Orders of
Mandamus, Prohibition and Certiorari;**

AND

**In the Matter of the Legality of the Decision of the Judicial
Service Commission and the Decision of the Chief Court
Administrator;**

AND

In the Matter of Abuse of Quasi-Judicial Powers;

AND

**In the Matter of Wrongful Misapplication of the Law and
Contravention of the Rules of Natural Justice;**

BETWEEN

DEUSDEDIT SYLVANUS MALEBO 1ST APPLICANT

AND

THE CHIEF COURT ADMINISTRATOR1ST RESPONDENT

THE JUDICIAL SERVICE COMMISSION2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

J. J. J.

Date of last Hearing: 15/05/2018

Date of Ruling: 25/05/2018

RULING

I. ARUFANI, J

The applicant, Deusdedit Sylvanus Malebo filed in this court the application for leave to apply for prerogative orders of Mandamus, Prohibition and Certiorari against the respondents mentioned hereinabove. The application is made under Rule 5 (1) and (2), (a), (b), (c) and (d) and Rule 5 (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 (Hereinafter referred to as the Rules), section 18 (1) of the Law Reform (fatal Accident and Miscellaneous Provisions) Act, Cap 310, R.E 2002 (Hereinafter referred to as Cap 310, and section 2 (3) of the Judicature and Application of Laws Act, Cap. 358 R.E 2002 (Hereinafter referred to as JALA).

The application was preferred and heard ex parte after the Attorney General being summoned and failed to appear before the court on the date when the application was set for hearing. The applicant argued the application in person and told the court that, he was employed by the Judicial Service Commission as a Magistrate on 18th day of June, 2007. He said to have been interdicted in 2015 after being charged with criminal offence.

After the criminal case being determined and found not guilty he wrote a letter to his employer praying to be reinstated in his employment but he didn't get any response to his letter. He said that,

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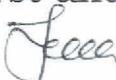
later on he was given a summons to appear before the second respondent where he was asked when he was employed and after mentioned the date of his employment he was ordered to present his travelling tickets for reimbursement of his fare and required to return to his working station to wait for his letter. He said the exercise of appearing before the second respondent and presenting his travelling tickets and reimbursed his fare took not more than fifteen minutes. He said that, on 20th day of February, 2018 he received a letter of removing him from his employment on public interest and the letter was written to him by the first respondent on the instruction given to him by the second respondent.

The applicant argued that, for all period of his employment he has never been taken to any Disciplinary Organ or given any warning and there is no any inquiry which has ever been conducted against him and he has also never been required to answer any charge levelled against him. He submitted that, as he was not satisfied by the decision of the second respondent to terminate his employment as he was not given chance to make his defence before the second respondent he wrote a letter to The Public Service Commission which notified him they don't deal with Judicial Officers but none Judicial Officers and advised him to use the Judiciary Administration Act, Act No. 4 of 2011 to pursue his grievances.

He said to have gone through the Judiciary Administration Act and find there is no any provision which he can use to pursue his grievances. He submitted that, section 35 (2) (a) – (c) of the Judiciary

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Administration Act provides for the procedures to be complied with when terminating employment of a judicial Officer but is not providing for how a Judicial Officer whose employment has been terminated can challenge the termination. He referred the court to the provisions of the Judicial Service (General, Termination of Service and Disciplinary) Regulations, GN No. 660 of 1998, Public Service Act, Act No 8 of 2002, the Employment and Labour Relations (Code of Good Practice) Rules, GN No. 42 of 2002 which all provides for the procedures required to be complied with before terminating or dismissing or removing an employee from his employment.

He said that, the procedure laid down in the above referred statutes were not complied with before being removed from his employment. He submitted that, as there is no any other forum provided by any law which he can use to pursue his grievances he has decided to come to this court to apply for leave of the court to apply for prerogative orders of Mandamus, Prohibition and Certiorari against the act of the first and second respondents to remove him from his employment without following the laid down procedures. He submitted that, as he was removed from his employment on 17th day of January, 2018 and he filed the instant application in this court on 11th day of April, 2018 the application is well within the time and prayed to be granted leave to apply for Orders of Mandamus, Prohibition and Certiorari against the first and second respondents as prayed in his chamber summons. 

chamber summons and after considering the argument of the applicant it has found that, the applicant has managed to establish all the requirements listed in the above case. The court has found the applicant has managed to establish clearly that the application was filed in court within the time. The court has arrived to the above finding after seeing the letter of removing the applicant from his employment was written on 18th day of January, 2018 and the application was filed in this court on 11th day of April, 2018. This is well within six months provided under Rule 6 of the Rules.

The court has also found the applicant has managed to establish he has an arguable case as is alleging termination of his employment was done contrary to the law. He said there is no charge which was place before him and required to make his defence before being terminated from his employment which to his view is contrary to the principle of natural justice. He has shown he has interest to the matter because he has stated his employment has been terminated. He also stated is at the age of 38 years whic is not easy for him to get another employment in Public Service.

In addition to the requirements stated in the above decision of the Court of Appeal, the court has found the applicant has also managed to satisfy the court he has no any other forum or avenue where he can take his grievances to seek for the remedy is intending to seek from this court if the application for leave to apply for prerogative orders against the decision of the second respondent will be granted by the court. The above requirement is getting support

J. J. J.

After hearing the argument of the applicant the court find proper to state at this stage that, the important matters which this court is required to take into consideration in determining the application for leave to apply for prerogative orders of Mandamus, Prohibition and Certiorari filed in this court by the applicant were well stated by the Court of Appeal of Tanzania in the case of **Emma Bayo V. The Minister for Labour & Youths Development and Others**, Civil Appeal No. 79 of 2012 where the Court of Appeal stated that:-

“It is at the stage of leave where the High Court satisfies itself that, the applicant for leave has made out any arguable case to justify the filing of the main application. At the stage of leave the High Court is also required to consider whether the applicant is within the six months limitation period within which to seek a judicial review of the decision of a tribunal subordinate to the High Court. At the leave stage is where the applicant shows that he or she has sufficient interest to be allowed to bring the main application. These are the preliminary matters which the High Court sitting to determine the appellant’s application for leave should have considered while exercising its judicial discretion to either grant or not to grant leave to the applicant/ appellant herein.”

By being led by what is stated in the above case the court has carefully going through the affidavit and statement supporting the

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from the case of **Abadiyah Selehe V. Dodoma Wine Company Limited**, [1990] TLR 113 where it stated that, As a general rule the court will refuse to issue the prerogative order if there is another convenient and feasible remedy within the reach of the applicant.

In the strength of all what has been stated hereinabove the court has found the applicant has managed to satisfy the court there are sufficient grounds to grant him leave to lodge in this court an application for prerogative orders of Mandamus, Prohibition and certiorari against the decision of the first and second respondents for mature consideration. In the premises the applicant is hereby granted leave to lodge in this court an application for prerogative orders against the respondents. As the application was not contested no order as to costs.

Dated at Dar es Salaam this 25th day of May, 2018


I. ARUFANI
JUDGE
25/05/2018