IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 12 OF 2018

IN THE MATTER OF AN APPLICATION FOR ORDERS OF MANDAMUS, PROHIBITION AND CERTIORARI;

AND

IN THE MATTER OF THE ILLEGALITY OF THE DECISION OF THE JUDICIAL SERVICE COMMISSION AND THE DECISION OF THE CHIEF COURT ADMINISTRATOR

AND

IN THE MATTER OF WRONGFUL MISAPPLICATION OF THE LAW AND CONTRAVENTION OF THE RULES OF NATURAL JUSTICE

BETWEEN

DUSDEDIT SYLVANUS MALEBO.....APPLICANT

AND

THE CHIEF COURT ADMINISTRATOR.....1ST RESPONDENT

THE JUDICIAL SERVICE COMMISSION.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

04&27/07/2018

RULING

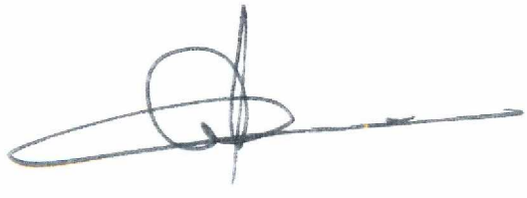
MWANDAMBO,J

The Respondents have preferred a preliminary objection against the Applicant's application for judicial review. Acting through the Hon. Attorney General, the Respondents contend that the application is incompetent for contravening Rule

8 (1) (a) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 (hereinafter referred to as the Rules). I am called upon to rule on the point raised.

Briefly, the Applicant is a former servant of law who had rose to the rank of Senior Primary Court Magistrate stationed at Mpambano Primary court in Songea. He was terminated from service on 18th January 2018 by way of retirement in public interest. Aggrieved, the Applicant applied for leave to apply for judicial review to remove into this Court to quash the decision of the Judicial Service Commission (the second Respondent). This Court (Arufani, J) granted leave to apply for judicial review in a ruling delivered on 25th May 2018. In terms of Rule 8 (1) (a) of the Rules, an application for judicial review must be accompanied by a copy of the statement in respect of which the application for leave was granted. It is contended by the Respondents that Rule 8(1) (a) of the Rules was not complied with in that a statement accompanying the chamber summons is different from the statement in respect of which this Court granted leave to apply for judicial review.

Mr. Baraka learned-State Attorney appeared and argued the preliminary objection before me. The learned State Attorney submitted that the variance in the statement in respect of which leave was granted and the statement annexed to the chamber summons makes the application incompetent and liable to be struck out. In amplification, Mr. Nyambita pointed out differences in the two statements in paragraphs 9 (1) and 9 (f).It was the learned statement Attorney's further submission that paragraph 10 (a) (iii) of the statement accompanying the chamber summons shows that the Applicant made amendments to the statement which should have been done at the stage of the application for leave subject to the Court's permission in accordance with Rule 7 (3) (a) of the Rules. From the foregoing submissions the learned State Attorney urged the Court to strike out the Application for being incompetent.



The Applicant who appeared in person conceded the variance in the two statements but argued that the omissions and amendment were innocuous to the application and so the Court should overlook them as immaterial and proceed to consider the application on merits. The Applicant invited the Court to draw inspiration from the decision of the Court of Appeal in **Samwel Kimaro V. Hidaya Didas, CAT (MZA) Civil Application No. 20 of 2012** (unreported) per Msoffe, JA referring to **Phantom Modern Transport (1985)** Ltd and **D.T. Dobie & Co. (Tanzania) Ltd**, Civil Reference Nos. 15 of 2001 and No.3 of 2002 (unreported) (at page 17) that is to say; allowing him to file a fresh statement instead of striking out the application.

Mr. Nyambita stuck to his guns in rejoinder and submitted that the prayer for amendment was made too late in the day because the Rules do not provide for that room at this stage and so the prayer should be rejected.

There is no dispute anymore that the statement in respect of which leave was granted is at variance with the statement accompanying the chamber summons contrary to the dictates of rule 8 (1)(a) of the Rules. Although the Applicant was adamant that the variance is innocuous, I do not think he is right. In my view, the maker of the Rules had intended that annexing the statement in respect of which leave was granted a must and hence the use of the word shall. To interpret that rule to mean that a party should have right to alter or amend that statement after the grant of leave and more so without the Court's permission as it were will be absurd and indeed it will result in rendering the rule meaningless.

The Applicant has prayed for the amendment of the said statement to conform to rule 8 (1) (a) of the Rules to which Mr. Nyambita strongly objected. For my part, I think the prayer for amendment in the manner it has been made cannot be sustained. I say so on the authority of the **The Board of Trustees of TANAPA V. Method Kimomogoro,** CAT(Arusha) Civil Application No. 1 of 2005 (unreported) in which the Court of Appeal frowned upon litigants and Advocates

making applications aimed at rectifying defects complained in the preliminary objection(s). I have applied the said decision in several cases notably; **Bob Chacha Wangwe V. The Attorney General &2 Others,** HC Miscellaneous Civil Cause No. 6 of 2018 (unreported) and **Petrofuel (T) Ltd and Isa Ltd V. Educational Books Publishers Ltd & 2 Others,** HC Miscellaneous Land Application No. 79 of 2016 (unreported). The Applicant's prayer fits squarely into the principle discussed in the above mentioned cases and so I cannot but reject it.

In the upshot, the application is found to be incompetent for failure to comply with rule 8 (1) (a) of the Rules and is struck out accordingly. Each party shall bear his own costs. It is so ordered.

Dated at Dar es Salaam this 27th day of July 2018.

L.L.S MWANDAMBO

JUDGE

27/07/2018