IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

(MAIN REGISTRY)

MISCELLANEOUS CIVIL CAUSE NO. 18 OF 2017

(In the matter of an Application for Orders Certiorari, Mandamus and Prohibition)

BETWEEN

EZEKIAH T. OLUOCH ..... APPLICANT

AND

THE PERMANENT SECRETARY, PRESIDENT'S OFFICE PUBLIC SERVICE MANAGEMENT.....1ST RESPONDENT

THE PERMANENT SECRETARY, MINISTRY OF EDUCTION, SCIENCE AND TECHNOLOGY .....2ND RESPONDENT

THE PERMANENT SECRETARY, PRESIDENT'S OFFICE REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT.....3RD RESPONDENT

THE SECRETARY, TEACHERS SERVICES COMMISSION .....4TH RESPONDENT

THE ATTORNEY GENERAL.....5TH RESPONDENT

JUDGMENT

23/1/-12/4/2018

Khaday; J.

According to the affidavit, statement and the Annextures in support of the application for judicial review, the following is a brief historical background of the matter before this court.

The applicant one Ezekiah T. Oluoch was a teacher at Tambaza Secondary School until on 1/7/2000 when he successfully vied for a post of Deputy Secretary General for Chama cha Waalimu Tanzania

(CWT). The material tenure for the post was 5 years, thus the period had to end on 30/6/2005.

Subsequent to the above, the applicant applied to the 1st respondent, for secondment of 3 years (Annexture OL 1). He got a positive response from the 4th respondent to the effect that he has been granted secondment for a period between 1/7/2000 and 30/6/2003, (Annexture OL 2). In the said letter, he was also warned that before expiry of the secondment period, he had to decide (and let it known to the said 1st respondent), either to return to the public service or to continue with the CWT.

After the elapse of the secondment period, in September 2003, the applicant wrote another letter to the 4th respondent asking for extension of time be with the CWT. In November 2003, the applicant received a reply from the said 4th respondent (Annexture OL 4), asking the applicant to make a decision; whether to return to the Public Service or to continue working with CWT. He was also remained of the conditions set in Annexture OL 2 in which the secondment was granted. The applicant found discomfort with the contents of the said letter. He wrote another letter expressing his dissatisfaction (Annexture OL 5). In that, he suggested changes in the Waraka No. TSC/90/1 of 7/9/2000 so that secondment period

would be five (5) instead of three (3) years to avoid inconvenience as he was then experiencing. No response came forthwith.

Meanwhile, the applicant was re-elected for the same post for the 2nd term. It covered the period between 18/5/2005 and 18/5/2010. Again, the applicant informed the 1st respondent of his triumph and he asked for leave without pay for a period of those 5 years (Annexture OL 8). This letter got no response until the applicant's tenure of 5 years elapsed in 2010.

Nevertheless, the applicant was re-elected for the 3rd term for the period between 28/5/ 2010 and 27/7/2015. Again, he requested for leave without pay (Annexture LO 12).

In March 2011, the applicant received a letter (dated 14/3/2011) from the 1st respondent, informing him of a retrospective grant of his request for leave without pay for four years that would take effect from 1/7/2006 and would end on 27/5/2010, and then for five years to cover the period between 28/5/2010 and 27/5/2015 (Annexture OL 13). Furthermore, the applicant was again instructed that upon elapse of the period of leave without pay so granted, he had to decide whether to return to his employer or to keep on with CWT. Meanwhile, by the same letter, the 1st respondent instructed the 2nd respondent to remove the name of the applicant from the list

of the government's payees for the whole period of leave without pay that was granted to the applicant.

Then came a controversial 4th term when the applicant was re-elected to the same post of the Deputy Secretary General for the CWT in May 2015. In this, having won the post, the applicant re-applied for a leave without pay for a period between 2015 and 2020. This time the 1st respondent responded, but he asked the applicant to submit to him the documents reflecting previous approvals for his leave without pay (Annexture LO 15). The applicant could not do so, at least not within a given time.

On 22/4/2016, the applicant received a letter (Annexture OL 16, dated 25/11/2015) from the 1st respondent, informing him that his request for leave without pay has been denied on the ground that he has overstayed outside the public service. The 1st respondent further made a reference to his earlier letter (Annexture OL 13) and reminded the applicant that he was required upon the expiry of his leave, to decide either to return to his former work or to opt for the CWT. That the applicant had failed to express his stance within the given time. Again, in the same letter, the 1st respondent reiterated his directive to the 2nd respondent to keep on excluding the name of the applicant from the Payroll.

The applicant contested the decision of the 1st respondent through Annexture OL 17 dated 23/4/2016. He insisted to be granted leave without pay until May 2020. Apparently, he got no response from the 1st respondent.

Nevertheless, the applicant continued to work for CWT until on 22/2/2017 when he received another letter (Annexture OL 18) from the 1st respondent requesting him to make a decision within 7 days; to choose between resuming public service or to remain an employee of the CWT. The applicant responded on the same day through Annexture OL 19, but he chose neither of the two. Instead, he reiterated his request for grant of leave without pay. He had his explanations in an attempt to justify granting of leave without pay and he questioned the reasons behind the refusal.

In March 2017, the applicant was served with another letter dated 16/3/2017 (Annexture OL 20) from the 1st respondent, informing the applicant that since he had failed to respond to Annexture OL 18, in which he was requested to declare his destiny in respect of his employment, the government has taken that the applicant has decided to remain outside the public service. Fresh directive was given to the 2nd respondent to remove the name of the applicant from the list of the government's servants.

Undaunted, the applicant kept on writing to the 1st respondent challenging the step taken against him (Annexture OL 21)

On 23/5/2017, the applicant was served with yet another letter (Annexture OL 22) from the Secretary General of the CWT informing him that he has been suspended from the office pending determination of the then ongoing dispute between the 1st respondent and the applicant over the status of his employment.

It is at this juncture that the applicant has come to this court seeking for prerogative orders, namely;

(i) Certiorari to quash the decision of the 1st respondent embodied in his letter with reference no. CA.87/164/10/A/9 dated 16TH March 2017 to wit, (a) removing the Applicant from the public service and (b) instructing the Applicant's employer to deregister the Applicant from the public servants' register

(ii) An order of Mandamus to compel the 1st respondent to determine the applicant's application for leave without pay on merit and;

(iii) An order of Prohibition to prohibit the 2nd, 3rd and 4th respondents from removing the name of the applicant

from the register of public servants under their mandates.

Earlier on 4/8/2017, and in Civil Application No. 30 of 2017, this court granted the applicant leave to file this application for judicial review.

All along, the respondents have been resisting the application. The matter was argued by way of written submissions.

In support of the application, Mr. Kheri Rajabu Mbiro learned advocate from Breakthrough Attorneys, submitted that the decision of the 1st respondent was arrived at, without due regard to the legal requirements for removal of a public servant from the public service, and that the applicant was condemned unheard. Learned counsel has a decision of the Court of Appeal made in SANAI MURUMBE & ANOTHER V MUHERE CHACHA (1990) TLR 54, to suggest the position under which the court should intervene by way of judicial orders whereby the subordinate tribunals make unreasonable and unjust decisions. The learned counsel further said that the 1st respondent as a public authority has failed to take into account matters which ought to have been taken into account and that the decision of the 1st respondent was ultra vires, unreasonable and violates the rules of natural justice in relation to right to be heard.

Mr. Mbiro further said that the 1st respondent emanates from Public Service Act, Cap 298 [RE: 2002], but that there is no provision in the Act which mentions the power of the said 1st respondent to deregister the applicant from the Public Service Register. Therefore, he said that the 1st respondent cannot in anyway, order other respondents to deregister the applicant from the Public Service Register. Again, the counsel referred to the Court of Appeal decision in Roshani Meghjee & Co. Ltd vs the Commissioner General Tanzania Revenue Authority TRA, Civil Appeal No. 49 of 2008 (unreported) in which it was held that a statutory person could only perform acts, which he is empowered to perform. He further said that such power is vested with the President of United Republic of Tanzania under Section 24 (1) of the Public Service Act, Cap 298 [RE 2002]. He also said that the removal of a public servant is guided by Order F 40 (1)-(5) of the Standing Order for Public service, 2009 (3rd Ed), and that for the matter at hand, the relevant law is Teacher's Service Commission.

Furthermore, the applicant argued that he had never been subjected to disciplinary proceedings, hence unfairly removed from public service. Thus, he said, the process of his termination from the work was done is in contravention of the relevant and governing laws

and he reiterated that the statutory body with a mandate to remove the applicant is Teachers Service Commission Act, 2015 established under Section 4 of the Act.

On the issue of fair hearing, the applicant submitted that he was not afforded an opportunity to be heard as envisaged by Article 13 (b) (a) of the Constitution of the United Republic of Tanzania. He has a case of Simeon Manyaki vs Institute of Finance Management (IFM) (1984) TLR 304 to support his point on importance to have right to be heard before one is condemned to any adversely conclusion. The applicant has another case of AUSDRILL (TZ) Ltd vs Musa Joseph Kumili & Another Civil Appeal No. 78 of 2014 (CA, unreported) in which the principle of Right to be heard (*audi Alteran partem*) was further expounded.

The applicant further said that Annexture OL 20 which is a letter that holds the decision of the 1st respondent is not backed by any provision of law, regulation or rule of law. He said a decision of the government has to cite the law under which that particular decision is based. He said that even before the court; the law used to terminate him from the public service has not been cited.

On the issue of leave without pay, the applicant argued that the 1st respondent was supposed to consider the applicant's

application for leave without pay, and no more. This he said, is provided for under Regulation 37 of the Local Government (TSS) 2016 GN 311 of 2016. He further said that the above provision of law does not provide a room for the 1st respondent to deny the application simply because the applicant has stayed with the CWT for a long time. He said that in any case, the respondent has no power beyond granting or denying the application for leave without pay. That the rest like removing him from the register of the public service is upon the applicant's employer; that is the 2nd respondent, the Permanent Secretary, Ministry of Education Science and Technology.

The applicant further complained of discrimination by the 1st respondent against the applicant. In that, he said that while he was denied leave without pay, his senior one Yahaya Msulwa was granted the same leave since 1995. He warned that discrimination is against Article 13 (5) of our Constitution and he called upon the court to take judicial notice of this fact and thus to hold that the 1st respondent decision is discriminatory calling for intervention.

The applicant further complained that the order for deregistration of the applicant from public service register disqualifies him from his position of leadership at the CWT, and that this will cause him to suffer double jeopardy. In that, he loses his position at

the CWT and at the same time, he is terminated from the public service.

On the option given to him on whether to opt for his post or to go back to the teaching, the applicant said that he could not make such decision on the understanding that in one post he was elected by the members of the CWT (in which he could not have the post if he is not a government employee), and on the other hand, he could not abandon CWT because the teachers or the members are the ones who voted for him under the law and under the Constitution of the United Republic of Tanzania, Cap 2.

The applicant challenged the allegation by the 1st respondent that the applicant did fail to respond to Annexture OL 18 and argued that he responded to the said letter through Annexture OL 19. In that, he said that he expressed his position on the issue of choice between leaving the government and joining the CWT. Therefore, he said that it is not true that he ignored to state his position. He insisted that he was not given fair hearing on the issue before the aggrieving decision was made by the 1st respondent.

Lastly, the applicant said that he would suffer loss of income if the unlawful decision of the 1st respondent is left to stay. He prays the court to make an order of certiorari to quash the decision of the

1st respondent and to issue another order of mandamus to compel the 1st respondent to determine the application for leave without pay on merit. The applicant also prays for order of prohibition to prohibit the 2nd , 3rd & 4th respondents from deregistering the applicant from the register of the public servants on the reasons stated above.

On the other hand, and as stated earlier, the respondents through Mr. Asante Hosea learned State Attorney resisted the application. In his written submission, Mr. Hosea used much time and energy to explain how this court lacks jurisdiction to entertain this matter which he said, involves labour dispute. He has several decisions of the Court of Appeal to support his point that even at this stage, the issue of jurisdiction of the court to handle the matter at hand can be looked at. One of the cited cases is that of Tanzania–China Friendship Textile Co. Ltd vs Our Lady of Usambara Sisters (2006) TLR 70. He asked the court to consider the issue and to hold that the matter is not amenable to judicial review. He said the matter being a labour dispute; has its own forum to go.

In the alternative however, learned State Attorney submitted that there was neither unfairness nor discrimination committed by the respondents in handing the applicant's matter. Apparently referring to the issue of one Yahaya Msulwa, the Secretary General of

CWT, Mr. Hosea said that the issue here is not who was granted and who was not granted leave without payment. He said much as they could not deny or admit the issue in their counter affidavit, the matter has to be determined on its merit as it was held in the case of Sri Krishna vs Commissioner of Income Tax (1983) 142 ITR 618 ALL.

On the letter (Annexture OL 20) by the 1st respondent to the 2nd respondent directing deregistration of the application for the public service register, the learned State Attorney said that the 1st respondent has power to do so and that the letter holds no final decision. Instead, he said the letter was simply directing another organ to act on the issue. The learned State Attorney further said that the 1st respondent has all powers to do what he has been done in view of the provision of Section 4 (1) (2) (3) & (4) of the Public Service Cap 298 [RE 2002].

Regarding right to fair hearing, Mr. Hosea has it that the claims have no legal basis. He said that there was number of official and relevant communications between the applicant and the Government, notably when the 1st respondent was dealing with the applicant's request for secondment on several times. That being the case, he said, a question of not being heard should not arise. He had a case of N.I.N. Munuo Nguni vs Judge in charge & AG (1995) TLR 464 to

suggest that hearing is not necessarily to be oral. He said in our case, the written communications that transpired between the parties, amount to hearing.

Mr. Hosea further cited a letter dated 14/3/2011 (Annexture OL 13) by the 1st respondent to the applicant in which the applicant was informed to have been granted secondment to work with WCT up to 2015 That in the same letter, the applicant was also warned that no further secondment would be extended to him after expiry of that one. The learned state Attorney further said that the applicant disregarded the warning and contested for the same post. That after being elected, he returned back to the 1st respondent and requested for further grant of leave without pay. Mr. Hosea submitted that the applicant was supposed to return to his employer.

Again, Mr. Hosea learned State Attorney argued that the applicant was given an ultimatum to heed to the directive; either to return to his former employer through Annexture OL 18, but that the applicant ignored the said directive by not responding to it. Learned State Attorney said that it was the applicant's employer who responded to the letter and the said letter (Annexture 19) was not directly replaying to the one by the 1st respondent, but it was holding other arguments relating to the subject matter. He said that from the

13/11/2017), hence the issue should not form basis of the complaint about discrimination. In the alternative, Mr. Hosea said that the issue of secondment is a discretion of the 1st respondent and it depends on number of factors. Therefore, he said that it is not proper to say that it is mandatory to have secondment granted to the applicant simply because another person has been granted.

Lastly, the learned State Attorney said that the applicant is not praying for quashing the decision of the 1st respondent that denied him of further secondment to CWT. Instead, Mr Hosea said that the applicant is praying for further secondment, the request which has already been refused (Annexture OL 16). He said therefore, the prayer has been overtaken by events. He prays the application be dismissed with costs.

In rejoinder, Mr. Mbiro learned counsel for the applicant challenged the submission by the Senior State Attorney on the issue

of jurisdiction of this court to handle this matter. He said that the issue of jurisdiction now becomes res judicata because the subject was thoroughly and adequately dealt with by this court in Misc. Civil Application No. 30 of 2017. That in its ruling dated 4/7/2017, this court overruled a preliminary objection raised by the respondents on the same subject matter and it was held that this court has inherent power to hear and to determine the matter.

The learned counsel further said that to revive and or to re-introduce the subject at this stage is abuse of court process. He has a Court of Appeal case of Mohamed Enterprises (T) Ltd vs Masoud Mohamed Nassor, Civil Application No. 33 of 2012 (unreported) to support his point that the court cannot overrule its own decision unless an appeal is preferred on the same matter. He insisted that once a judgment and decree are issued by a given court, judge or magistrate of the court becomes *functus officio* as far as that particular matter is concerned. He further referred to the provision of Section 9 of the Civil Procedure Code, Cap 33 [RE: 2002] that provides for the principle of Res Judicata. Mr. Mbiro further said that much as he appreciates the principle laid down in the case of Our Lady of Usambara Sisters case (supra) that the issue of jurisdiction could be raised at any stage of the case; the positions are

distinguishable because in our case, the issue was raised and conclusively determined.

Regarding the power of the 1st respondent to issue Annexture OL 20, learned counsel reiterated all what has been said in his submission in chief and insisted that the said 1st respondent acted ultra vires his powers.

Despite long narration, I find only two issues for consideration and determination. First, it is whether the issue of jurisdiction of this court to handle this matter can be entertained at this stage. Second, it is whether the application for judicial review has merit.

We have long submission by learned State Attorney on the issue of jurisdiction of this court to handle the matter at hand. His main argument is that the subject matter in this case has roots in the applicant's employment, hence a labour dispute. He said that the case has to be properly dealt with by the Labour Division of the High Court that was established under Section 51 and 52 of the Employment and Labour Relation Act, 2004 and Labour Institutions Act 2004. On the other hand, the counsel for the applicant said that the issue of jurisdiction was adequately determined by this court on 4/7/2017, in which the ruling was made in favour of the applicant.

I had an ample time to read the material ruling of this court dated 4/7/2017. As a result, I agree with Mr. Mbiro that the matter was in fact discussed and determined in favour of the present applicant. It was a result of the preliminary objection that was raised by the respondents during the hearing of the application for leave.

In the said ruling, the court clearly held that the application before it was not a labour dispute and that the preliminary objection in that respect is a misconception. The court further said that since the applicant was seeking for prerogative orders to challenge the administrative decisions of the 1st respondent, the court had jurisdiction to entertain the matter.

With the above scenario, I am in agreement with Mr. Mbiro learned counsel for the applicant that the same subject cannot be revived and determined by this court since as he rightly said, the court becomes *functus officio*. It could have been different if the subject is brought to court for the first time as it was done in the case of Our Lady of Usambara Sisters (supra). The issue is therefore found in favour of the applicant.

The next move is to determine whether the application has merit. In so doing, the court will look and determine whether the applicant was given fair hearing over the matter and whether the 1st

respondent's decision dated 16/3/2017 has any procedural and administrative irregularity; thus moving the court to invoke its jurisdiction and to grant prerogative orders so sought.

On the issue of fair hearing, the court has no much to discuss. There have been several correspondents between the applicant and the 1st respondent over the matter at hand. In that, there had been exchange of letters relating to the matter. These include Annextures OL 4, OL 5, OL 13, OL 15, OL 16, OL 17, OL 18, OL 19, OL 20 and OL 21. All these documents or letters were in respect of the status of the employment of the applicant with the 2nd respondent while he was working with CWT when on secondment/leave without pay.

It is now the applicant's complaint that he was not given or afforded an opportunity to be heard when adverse conclusion was made against him. He said the move by the 1st respondent goes against the provision of Article 13 (b) (a) of our Constitution.

Much as the court understands the value of the principle of *Right to be heard*, and much as the court is aware of the decision of the superior courts in the above cited cases, it finds that the applicant had fair hearing through the above mentioned correspondences. The applicant was adequately responded to, in respect of his letters only

that his request was not granted to his satisfaction. In fact the applicant has general complaint that he was not given a fair hearing. However, he has failed to specify as to what particular aspect he was denied of fair trial. The only conclusion available here in my opinion, is that the applicant is just against denial of his request to have more time for leave without pay.

Under these circumstances, I tend to agree the learned State Attorney that the applicant was afforded fair trial, and that fair hearing is not necessarily to be oral. Letters suffice the purpose as held in the case of N.I.N Munuo Nguni (supra). As a result, the applicant's complaint relating to lack of fair hearing is therefore found to have no basis.

Regarding the decision of the 1st respondent that is contained in Annextures OL 20, the court finds that this cannot be considered in isolation of the other related Annextures. Let us have the relevant contents of Annexture OL 20, which is dated 16/3/2017.

> *"Rejea barua yangu ....ya tarehe 20 Februar, 2017,*
>
> *... ulitakiwa kuwasilisha taarifa kuhusu* ***uamuzi wako ama kurejea Serikalini au kuajiriwa moja kwa moja na Chama cha Walimu Tanzania***

*(**CWT**). Hadi tarehe ya barua hii, ikiwa ni zaidi ya siku ishirini na tatu (23) tangu ulipotakiwa kufanya hivyo, Ofisi haijapokea maelezo yoyote kutoka kwako.*

*Ninapenda kukuarifu kuwa kutokana na kushindwa kwako kutekeleza maelezo niliyotoa katika barua yangu niliyoitaja hapo juu, **Serikali inatafsiri kuwa umeamua kuendelea kuwa nje ya utumishi wa umma.***

*Kwa sababu hiyo mwajiri wako wa awali anaelekezwa kuondoa jina lako kwenye orodha ya watumishi wake **kuanzia tarehe ya barua hii kwa kuwa wewe sio tena mtumishi wa umma."***

(Emphasis added)

The letter referred to in this Annexture OL 20 is Annexture 18 dated 20/2/2017 that was sent to the applicant earlier, requesting him to decide whether to go back to his former work or to remain with the CWT. To have a clear understanding of the scenario, let me reproduce the most important parts of Annexture OL 18:-

"Rejea barua yangu ya tarehe 25 Novemba, 2015.

Katika barua yangu tajwa hapa juu nilikujulisha kuwa ombi lako la nyongeza ya likizo bila malipo kwa kipindi cha miaka mitano (5) kuanzia tarehe 28 Mei, 2015 hadi tarehe 27 Julai, 2020 ***halikuridhiwa****. Hivyo* ***ulitakiwa kuamua ama kurejea kwa mwajiri au kuajiriwa moja kwa moja na Chama cha Walimu Tanzania (CWT) baada ya kibali cha awali kumaliza muda wake.***

3. Kumbukumbu zilizopo hazionyeshi uamuzi wowote wa maandishi uliofanya kufuatia uamuzi wangu huo. ***Unatakiwa kueleza msimamo wako kuiwezesha Serikali kuchukua hatua mwafaka kuhusiana na ajira yako Serikalini.***

4. Uamuzi wako unifikie siku saba (7) baada ya kupokea barua hii."

(Emphasis added)

Again, the letter referred in this Annexture OL 18 is Annexture OL 16 in which, it was clearly explained that the applicant's application for leave without pay has been refused. In that, it was stated that the leave without pay so granted through a letter with ref. No. CAC.90/304/01/B/6 dated 14/3/2011-(Annexture OL 13) would end up on 27/5/2015, and that that was in compliance with the *Waraka* No. C/AC.45/257/01/Temp/16 of 8/10/2009. The applicant was further warned that upon the lapse of the leave, he had to make his decision known to his employer as to whether he would opt for his former work or to keep on with the CWT.

Until the time of filing this matter in court, the applicant was yet to make a decision on his destiny. Instead, he is now asking the court to order the 1st respondent to determine his application without leave on merit.

With due respect to the applicant, this court finds itself unable to use its powers found under judicial review to order the 1st respondent to determine the applicant's application on merit. First, the application for extension of leave without pay has already been refused since 15/11/2015 (Annexture OL 16) and that the application before me is not an appeal against the said Annexture OL 16.

Second, the applicant is not against the propriety of the law and regulations that guide leaves without pay. What this court is interested in; is to see whether the respondents have committed any procedural and administrative offence in their official duties when handling the matter at hand. It is therefore not a matter of challenging the decision of the 1st respondent in its general terms.

Furthermore, in his submission, the applicant argued that his leave without pay has to be considered favourably because it has public interest. The interest in question as I understood from the submission is that the applicant was elected by the members of the CWT using their rights found under the law. Moreover, my understanding of the interpretation of the provision of the Regulation H.19 of the Standing Order for Public Service 2009 is that leave without pay is at the discretion of the Permanent Secretary of the responsible Ministry. The same provision reads:

> *It is the Government's policy not to grant leave without pay to employees. However, the Permanent Secretary (Establishments) may grant leave without pay to public servants provided that he is satisfied that it is in the public interest to do so. Such*

approval shall be obtained before a public servant goes on leave without pay.

Throughout my reading of the Standing Order, I could see no provision that suggests that an employee whose application for leave without pay has been refused can go to court to challenge such refusal.

I am tempted to add here that the applicant in our case was granted leave without pay for a period between the years 2006 and 2015. Prior to that, he was on the same post, but on secondment since 2000 when he contested for leadership at the CWT for the first time. Much as this count cannot go into other details of the circumstances under which the leave without pay was refused, it takes into account the *Waraka* so cited by the 1st respondent in Annexture OL 13 which was a guidance for the subject in question. The court also takes into consideration the provision of Regulation H.19 of the Standing Order for Public Service 2009 cited above. In any case, it is my considered view that the law and Regulations guiding the subject should not be superseded by the interest of the applicant or of the members of the CWT. Again, in any case, it would have sound better if the members of the CWT were the ones to challenge the decision of the 1st respondent and not the applicant himself.

Furthermore, and in passing, I may add here that with the warning given by the 1st respondent as reflected in Annexture OL 13, the applicant was not expected to vie for the post for a period beyond 2015 on assumption that he was doing so for or in public interest.

The applicant further complained that unlike what has been alleged by the respondent in Annexture 20, he did respond to Annexture 18 of the 1st respondent and that Annexture 19 was his response. This may be true. It might be that the 1st respondent failed to get hold of Annexture 19 before he issued Annexture 20. However, Annexture 19 has no or does not hold what was required from the applicant by the 1st respondent. In that, the applicant could not give the 1st respondent his option as far as his employment is concerned. Instead, in Annexture OL 19, the applicant kept on challenging the conditions set against his wishes.

The applicant also complained of discrimination on the part of the 1st respondent in refusing grant of leave without pay to him while the other person named as Yahaya Msulwa was granted the similar leave. Again, I find not proper to discuss this because we have no particulars of this other person, and in record we have no enough evidence to connect this Msulwa to this case. After all, he is not a

party to the case. In this circumstance, the court finds no evidence to substantiate the claims on discrimination.

The essence of judicial review is to check that public bodies do not exceed their jurisdiction and carry out their duties in a manner that is detrimental to the public at large as held in Republic vs Permanent Secretary/Secretary to the Cabinet and Head of Public Service Office of the President & 2 others [2006] eKLR. Orders for Certiorari and Mandamus can only be issued where it has been shown that the authority in question has acted without, or in excess of its jurisdiction, or where such authority is shown to have acted with bias, or where there is an error on the face of the record, or where on the totality of the fact and circumstances discloses, the authority in question did not act legally or judicially. See also George Lugga Maliyamkono vs Principal Secretary of the Ministry of Science, Technology and High Education & 2 Others (2000) TLR 44.

Upon scrutiny of the entire chronological events in our case, I am satisfied that the 1st respondent acted well and fairly within the bounds of his limits. In other words, grounds for judicial review were never violated by the 1st respondent. Therefore, the court finds no fault upon which to exercise its judicial review powers. If the

applicant finds that he has been unfairly terminated from employment, he has all rights to challenge such decision through other but proper channels or venues.

The application for judicial review therefore fails for the reasons stated about.

No order as to cost is made. Each party to bear its own costs.

It is so order.

P. B. Khaday

Judge

12/4/2018

Delivered at Dar Es Salaam this 18th Day of April, 2018.

Deputy Registrar

High Court, Main Registry