

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MAIN REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS CIVIL CAUSE NO. 3 OF 2018

**IN THE MATER OF AN APPLICATION FOR LEAVE TO APPLY
FOR ORDER OF CERTIORARI**

**IN THE MATER OF CHALLENGING THE DECISION OF THE
UBUNGO DISTRICT COMMISSIONER BY THE LETTER DATED
THE 02 JANUARY, 2018 REF. NO. AB. 50/127/02D/29 AT
DAR ES SALAAM.**

BETWEEN

PHILIBERT MTEI1ST APPLICANT

ERASMUSI KIMARO2ND APPLICANT

AND

THE UBUNGO DISTRICT COMMISSIONER1ST RESPONDENT

**THE DISTRICT ADMINISTRATIVE
SECRETARY.....2ND RESPONDENT**

Date of last Hearing: 13/02/2018
Date of Ruling: 13/02/2018

RULING

I. ARUFANI, J

The applicants filed in this court an application for leave to apply for an order of certiorari to quash the decision of Ubungo District Commissioner which declared one Grace Mkandawile the rightful owner of the plot of land located at Msigwastreet, Msigani ward at Kibamba within Ubungo District in Dar es Salaam

Region. The application is made under section 17 (2) of the Law Reform (fatal Accident and Miscellaneous Provisions Act, Cap 310, R.E 2002, Rule 4 and 5 (1) and (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 and any other relevant provisions of the law. The chamber summons is supported by an affidavit sworn jointly by both applicants.

The application was preferred ex parte and at the hearing of the matter the applicants were represented by Mr. George Masudi, Learned Advocate. The counsel for the applicants prayed the court to adopt the contents of the affidavit of the applicants filed in this court to support the application. The learned counsel explained to the court that, sometimes in November, 2001 and April, 2002 the applicants purchased two different plots of land from one Amina Juma who was the guardian of Grace Mkandawile who by that time was still young. He said after Grace Mkandawile attained the age of majority in 2016 she claimed ownership of the land sold to the applicants and referred her complaint to the office of the respondents.

The learned counsel for the applicants told the court that, after the applicants being summoned to appear before the first respondent and informed about the land dispute they prayed for time to present their documentary evidence and witnesses to prove their ownership to the land in dispute. Upon going to the office of the first respondent on the date of presenting their evidence, their

witnesses were not heard and their documentary evidence were not considered. He said on 8th January, 2018 the applicants received a letter dated 2nd January, 2018 notifying them that, after the office of the first respondent considered the evidence of Grace Mkandawile it declared her the rightful owner of the land in dispute.

The learned counsel stated that, the applicants were aggrieved by the decision of the first respondent and find the office of the respondents exercised the powers which were not within his jurisdiction and decided to come to this court to seek for leave to apply for an order of certiorari to quash the said decision. He referred the court to the case of **Pavisa Enterprises V. The Minister for Labour, Youths Dev. & Sports and Another**, Misc. Civil Cause No. 65 of 2003, HC at DSM (Unreported) where it was stated when prerogative order of certiorari can be granted. He prayed the court to consider the grounds deposed in the affidavit of the applicants and what he has submitted before the court and grant the applicants leave they are seeking from this court so that they can apply for an order of quashing the decision of the first respondent.

The court has found proper to start by stating at this stage that, some of the matters the court is required to take into consideration in determining this application for leave to apply for an order of certiorari 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 2011. It was stated in the said case 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 joint affidavit of the applicants and after considering the submission of the learned counsel for the applicants it has found that, it is true that there is a land dispute between the applicants and one Grace Mkandawile which was referred to the office of the respondents for determination. After

entertaining the said dispute the respondents came to the decision that, they are recognizing Grace Mkandawile as the rightful owner of the land in dispute and advice whoever would have been aggrieved by the decision to go to the Land Tribunal. The above finding is well articulated in the letter dated the 2nd day of January, 2018 signed by the second respondent and annexed to the affidavit of the applicants as annexure P1.

The court has also found the applicants have stated in their statement of facts that, the respondents had no powers to entertain the land dispute and ascertain the rightful owner of the land in dispute. They stated further that, as provided under section (1) and (2) of the Land Disputes Court Act. Cap 216 R.E 2002 that power is vested to Village Land Council, Ward Tribunal, District Land and Housing Tribunal, High Court and the High Court and the Court of Appeal. The above stated facts makes the court to find the applicants have managed to establish they have arguable case and sufficient interest to move the court to allow them to file the application for prerogative order of certiorari to quash the decision arrived by the respondents in respect of their land dispute. In addition to that the court has found the application has been made promptly within six months from the date of the decision intended to be challenged as provided by the law.

I understand there is another factor need to be considered before granting leave to apply for prerogative orders or remedies and this is whether there is no other speedy and effective remedy

available to the applicants and such alternative remedy is available whether, prima facie, judicial review is a better way of obtaining the relief sought. The court has considered this factor and come to the finding that, though the respondents stated in the annexure P1 that, whoever is aggrieved by the decision can go to the land court but that is not an appellate avenue for a person aggrieved by the decision of the respondents made in relation to the land dispute taken to their office. Therefore that is not the proper forum for the applicants to get the effective remedy they are seeking for against the decision of the respondents.

In the upshot the court has found the applicants have managed to satisfy the court they deserve to be granted leave sought from this court to enable them to file in this court an application for prerogative order of certiorari to quash the decision made by the respondents in respect of their land in dispute. Consequently, the application is granted as presented in the chamber summons with no order as to costs.

Dated at Dar es Salaam this 13th day of February, 2018




I. ARUFANI
JUDGE
13/02/2018