

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

**AT DAR ES SALAAM**

**MISC. CIVIL CAUSE NO. 28 OF 2018**

**THE REGISTERED TRUSTEES OF  
DEMOCRATIC PARTY (DP).....APPLICANT**

**VERSUS**

**THE REGISTRAR OF POLITICAL PARTIES.....1<sup>st</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>nd</sup> RESPONDENT**

**RULING**

*27/06/2019 & 22/07/2019*

**Masoud, J.**

The applicant is the Registered Trustees of the Democratic Party. She is aggrieved by decisions of the first respondent. The decisions are said to have invalidated the Annual General Meeting of the Democratic Party (hereinafter referred to as the party or the applicant's party) held on 26/05/2017, and interfered with internal affairs of the party. The applicant filed this application for judicial review of the decisions after obtaining leave of this court on 23/11/2018 as per Mwandambo, J. The application was filed under section 17(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act cap. 310 R.E 2002, rules 8(1) (a) and 8(2), 8(3) and 15(a) of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules GN No. 324 of 2014. Principal prayers for prerogative orders sought by the applicant are couched in the following terms:

- a) *Certiorari quashing the decisions of the 1<sup>st</sup> Respondent (the Registrar of Political Parties) contained in letter Ref. No. HA/322/362/11/61 dated 03<sup>rd</sup> July 2017 (Annexure DP6 to the affidavit); Ref. No. HA/322/362/11/71 dated 13<sup>th</sup> September, 2017 (Marked DP-8 to the affidavit); Ref. No. HA/322/362/11/66 dated 3<sup>rd</sup> August, 2017 (Annexure DP-10 to the affidavit); Ref. No. HA.322/362/11/85 dated 06<sup>th</sup> October, 2017 (Annexure DP-13 to the affidavit) and Ref. No. HA.322/362/11/97 dated 09<sup>th</sup> November, 2017 (Annexure DP-14 to the affidavit).*
- b) *Prohibition prohibiting and restraining the 1<sup>st</sup> Respondent (Registrar of the Political Parties) from interfering with the internal management affairs of the Democratic Party, its autonomy, cohesion and rights.*

The application is supported by an affidavit and a statement of the applicant sworn and signed respectively by Ms Georgia Christopher Mtikila as a member of the party and national chairperson of the applicant. On the other hand, the application was opposed by the respondents who filed a counter-affidavit sworn by Mr Hangi M. Chang'a, learned State Attorney for the respondents, on information received from the first respondent, and a statement in reply also made and signed by the said learned State Attorney. There is however no affidavit sworn by the first respondent or an officer of the first respondent's office in relation to the assertions in the counter-affidavit.

It is common ground that the decision which invalidated the meeting was communicated to the applicant's party by the first respondent's letter of 03/07/2017 referenced Ref No. HA.322/362/61. The decision traces its origin from the first respondent's letter Ref HA.322/362/11/31 dated 25/05/2017 informing the party about complaints received by his office about the party's Dar es Salaam election and objection to holding the meeting. Apart from invalidating the meeting, the decision also demanded the party to convene a fresh Annual General Meeting. The decision was followed by other decisions which are also challenged by the applicant in this application for interfering with the party's internal affairs. The main body of the letter containing the decision which invalidated the meeting and triggered the other decisions reads as follow:

**"YAH: MKUTANO MKUU WA DEMOCRATIC PARTY (DP) ULIOFANYIKA  
TAREHE 26 MEI 2017**

*Naomba urejee barua yako yenye kumbukumbu namba DP24/04 ya tarehe 29 Mei, 2017 iliyosainiwa na Ndugu Feruzi Msambichaka na nyingine yenye kumbukumbu namba DP 24/03 ya tarehe 05 Juni, 2017 iliyosainiwa na Joachim Mwakibinga. Barua zote mbili zinahusu suala tajwa hapo juu.*

*Rejea pia barua kutoka Ofisi ya Msajili wa Vyama vya Siasa yenye kumbukumbu namba HA.322/362/11/31 ya tarehe 25 Mai, 2017, iliyokitahadharisha chama chenu kuhusu uhalila wa mkutano mkuu uliofanyika tarehe 26 Mei, 2017 **baada ya kupokea malalamiko kadhaa kutoka kwa wanachama wa DP ikiwemo viongozi wa kitaifa kuhusu maandalizi ya mkutano huo.***

*Natumia fursa hii kukufahamisha kuwa, Ofisi ya Msajili wa Vyama vya Siasa imesoma kwa makini nyaraka mlizowasilisha kuhusu mkutano Mkuu tajwa hapo juu, **barua za malalamiko zilizowasilishwa na baadhi ya wajumbe wa mkutano huo, ikiwamo viongozi wa kitaifa wa chama chenu na Katiba na kanuni za chama chenu.***

*Pamoja na kusoma nyaraka hizo, Ofisi ya Msajili wa Vyama Vya Siasa pia ilifuatilia mwenendo wa maandalizi na kufanyika kwa mkutano huo, na imeona kuwa mkutano huo **haukuwa halali kwa sababu haukuitishwa kwa kufuata utaratibu uliowekwa katika Katiba na Kanuni za DP. Vile vile wajumbe wengi waliohudhuria wanasemekana kuwa siyo halali kiasi cha kufanya akidi ya mkutano kutotimia.***

*Napenda DP muelewe kuwa, Mkutano wenu haukufuata matakwa ya Katiba na Kanuni za chama chenu, kiasi ambacho hata kiongozi aliyewasilisha taarifa rasmi ya mkutano huo kwa Msajili wa Vyama vya Siasa na kusaini taarifa zote za chama ikiwemo fomu PP7 ambaye ni Ndugu Feruzi Msambichaka, ameandika barua kwa mkono wake kumfahamisha Msajili wa Vyama vya Siasa kuwa haukuwa halali.*

*Hivyo Msajili wa Vyama vya Siasa anawataka kufanya Mkutano Mkuu wa Taifa halali na kuchagua viongozi wa kitaifa wa chama chenu, ndani ya kipindi cha miezi miwili kuanzia tarehe ya barua hii. [Emphasis added].*

*Sisty L. Nyahoza  
Kny: **MSAJILI WA VYAMA VYA SIASA***

The statement of the applicant set out detailed facts describing grounds relied upon for the reliefs sought. The facts hinge on the following complaints. That, the first respondent interfered with the internal affairs of the party contrary to the Political Parties Act, cap. 258 R.E 2002 and unlawfully invalidated the Annual General Meeting which was lawfully held on 26/05/2017 and its outcome duly submitted to the first respondent as is required by the law. That, despite lawful disciplinary decisions taken against some leaders of the party who were as a result removed from their leadership positions, the first respondent invalidated such decisions. That, such disciplinary decisions had properly been brought to the knowledge of the first respondent as per the requirements of the law. The thrust of the complaints was that the first respondent's decisions were unreasonable and did not have any basis under the law and the Constitution of the party.

The affidavit sworn in support of the facts in the statement made it clear that the deponent was authorized to make the affidavit and the statement and institute the present proceedings. Relevant minutes of the applicant were annexed as Annexure DP-1. The affidavit further indicated how the Annual General Meeting which was eventually invalidated by the first respondent was prepared before it was held on 26/05/2017 and the report of the meeting consisting of proceedings of the meeting, minutes of the meeting and members who attended the meeting was duly submitted to the first respondent along with a duly filled FORM PP.7 (i.e a Notice of Change of Office Bearers of a Political Party) and a covering letter with refer No. DP24/04 dated 29/05/2017. A letter referenced HA 322/362/11/51 of 16/06/2017 was disclosed to evidence the receipt of the report by the first respondent.

It was shown further in the affidavit that when the first respondent was notified about the meeting which was scheduled to be held on 26/05/2017, he told the party that the meeting would be invalid unless members' complaints on the election of the party for Dar es Salaam region and objection against holding the meeting were resolved. The party's response was that the complaint if any would not render the meeting invalid. The court was in this regard referred to the relevant correspondences which were annexed to the affidavit as Annexes DP-4 and 5. Underscoring the complaint as to the first respondent's interference, the affidavit was clear that it all started with the first respondent's letter informing the party that the meeting would be invalid as afore stated which letter was subsequently followed by the letter that invalidated the meeting and ordered the party to convene a fresh Annual General Meeting without adducing details on the grounds for such decision.

The affidavit likewise referred to the meeting convened by the first respondent on 20/09/2017 to discuss how the Annual General Meeting could be held afresh contrary to the Party's Constitution and rules. The affidavit shows that the party protested the meeting being held as it was an interference to the party and maintained by its letter dated 19/09/2017 referenced DP24/09 that the General Meeting held on 26/06/2017 was valid. It also averred in relation to Feruzi A. Msambichaka who was removed

from his position as a Secretary General of the party on disciplinary grounds and the first respondent refused to recognize the decision of the party. Correspondences between the party and the first respondent on the issue were referred.

It was also pointed out in the affidavit that the first respondent refused to accept the report of the Annual General Meeting of the party and the changes of office bearers. But the first respondent only accepted without any basis whatever he was told by persons he referred to as leaders of the party. Furthermore, the affidavit evidenced that the first respondent informed the party of the intended vetting exercise of leaders of the party and that the party was subsequently served with letters threatening to cancel the party for the alleged failure to hold Annual General Meeting as per the purported extension which was allegedly sought by the party and granted by the first respondent. The applicant is clear in the affidavit that she disputes that the party had sought extension for holding Annual General Meeting afresh.

By way of opposing the application, the respondents' statement in reply has it that the application is not supported by any valid ground upon which prerogative orders can be granted as the purported grounds did not qualify as grounds for judicial review. The counter-affidavit sworn by the learned State Attorney for the respondents in support of the averments in the statement in reply disputed all allegations by the applicant. In particular, the learned State Attorney stated in a nutshell as follow. That, the Annual General Meeting purportedly held on 26/05/2017 was not held in accordance with the Constitution and rules of the party and the Political Parties Act. That, the first respondent exercised his duties in accordance with the law which entitles him to verify changes of national leaders of a party and ensure that the same are made in accordance with the constitution and rules of the party, and the Political Parties Act (*supra*). That, the first respondent acted in accordance with the law when it required the party to hold Annual General Meeting afresh and issued a notice of intention to cancel the party for the failure of the party to hold Annual General Meeting afresh as directed. And that, the first respondent convened a meeting of national leaders of the party with a view to mediating the conflicting sides of the party and obtaining a consensus for holding Annual General Meeting afresh as

requested by one of the national leaders of the party. It is at the outset important to note that neither were the infringed provisions disclosed and expounded in the affidavit nor was the alleged verification exercise supported by a report that informed the subsequent decision(s).

The matter was by consent disposed of by way of filing written submissions. Pursuant to the schedule which was set by the court, Mr Juma Nassoro and Mr Daimu Halfani, learned Advocates jointly filed submissions for the applicant while Mr Hangi M Chang'a, learned State Attorney, filed submissions for the respondents.

Arguing in support of the application, the learned Advocates for the applicant adopted the affidavit supporting the application and expounded on the contents of the affidavit. The submissions also made a detailed exposition of the guiding principles upon which orders of certiorari, mandamus and prohibition can issue citing a good number of authorities including **Felix Mselle vs Minister for Labour and Youth and Three Others** [2002] TLR 437, 446; **George Lugga Maliyamkono vs Principal Secretary of the Ministry of Science Technology and Higher Education and two Others** [2000] TLR 44; and **Republic vs The Kenya Anti-Corruption Commission and Others** [2009] 1 EA 384, 393.

Expounding on the affidavit, the submissions showed how the party held the meeting after informing the first respondent who a day before the meeting informed the party the possibility of the meeting becoming invalid if the complaints concerning the party's Dar es Salaam election and objection of the meeting were not resolved. Despite the party's response to the first respondent that the complaints should be routed to the party and insistence that the meeting was valid as the complaints could not justify invalidation of the meeting, the first respondent declared the meeting invalid by its letter to the party dated 03/07/2019. When the meeting was declared invalid, the report of the meeting held on 26/05/2017 had already been lodged to the first respondent along with Form No. PP7. There was consequent to the general meeting, a disciplinary action of the party Secretariat which removed one Feruz A. Msambichaka from the position of the Secretary General of the party. It is further

argued that although the first respondent was duly notified of the disciplinary decision, he refused to accept the decision of the party's disciplinary authority alleging that the secretariat was not properly constituted as its members were elected in the invalid Annual General Meeting.

In addition, the submissions of the learned counsel for the applicant attacked the first respondent for constituting himself as a supervisory and appellate authority for the party's internal matters and has kept on recognizing persons who are not lawful leaders of the party as if they were party leaders. The first respondent was further attacked for purporting to grant the party extension to hold annual general meeting afresh acting on a purported letter from the party. The subsequent threats to cancel the party's registration for the reasons of failure to hold a fresh Annual General Meeting were also challenged in the submissions. It was also argued that the first respondent never disclosed sources of his power that entitle him to make the decisions he made against the party. In the submissions, the court was told that the first respondent assumed powers which he does not have under the relevant law and the constitution of the party.

It was in the first place argued that the first respondent acted in excess of his powers. Reference was made to sections 4(4), 8A(1) and 10(f) of the Political Parties Act, cap. 258 R.E 2002, and regulation 5(1) of the Political Parties (Registration) Regulations, 1992 [GN No. 111 of 1992]. In relation to such provisions, it was argued that they do not at all confer upon the first respondent powers to determine dispute and issue orders to the applicant's party; let alone powers to receive complaints or appeal from the decisions of internal organs of a political party. Article 20(2) of the Constitution of United Republic of Tanzania was equally referred in relation to the requirements of a party to have its own constitution which provides for internal affairs of a party. I was on the foregoing argument referred to **Emmanuel Nyenyemela and Another vs Registrar of Political Parties and Others**, Civil Case No. 6 of 2003 (unreported); **The Chairman of Democratic Party vs The Registrar of Political Parties and Another**, Misc. Civil Application No. 42 of 1993 (unreported).

It was in the second place argued that the first respondent acted contrary to the legitimate expectation. It was argued that the party was obliged to hold Annual General Meeting on or by May 2017 and elect its new leaders. Since the first respondent reminded the party to hold such meeting not later than 26/05/2017, it was out of the legitimate expectation that the first respondent would frustrate the General Meeting he reminded the party to hold. As to what constituted legitimate expectation and how it arises, the learned counsel for the applicant relied on **Republic vs Juridical Commission of Inquiry** [2007] 3 EA 392.

It was lastly argued in relation to irrationality of the decisions as one of the grounds for this application. It was submitted that decision of the first respondent not to recognize the General Meeting of 26/05/2017 was irrational. There was no quarrel by the first respondent on the quorum of the meeting, authority of the convener or leaders who supervised or chaired the meeting. Further that the allegation of the dispute on the election of the party for Dar es Salaam and objection of holding the meeting ought to have been resolved by the party's internal machinery and not the first respondent who ended up frustrating the valid meeting and lawfully elected party leadership. The case of **Koyabe and Others vs Minister for Home Affairs and Others** [2009] ZACC 23 was cited to emphasize the importance of exhausting internal remedies.

Replying submission by the learned State Attorney for the respondents mainly relied on the case of **The Registered Trustees of the Civic United Front (CUF-Chama cha Wananchi) vs The Registrar of Political Parties and Others**, Misc. Civil Cause No. 23 of 2016 (unreported). The case was relied on in relation to the learned State Attorney's views that the first respondent undertook due diligence and confirmed that he has jurisdiction under sections 8A and 8B of the Political Parties Act (supra) and regulation 5 of the Political Parties (Registration) Regulations, 1992 which entitle him to scrutinize the validity of the information brought to him by political parties.



The learned State Attorney specifically submitted that, the first respondent observed rules of natural justice by informing the party about the contravention of the law before invalidating the meeting; that the first respondent acted in accordance with his duties under the law; that the expulsion of the relevant leaders did not adhere to the disciplinary machinery of the party; that, when the party held the invalidated meeting on 26/05/2017, Mr Abdula Mluya, Mr Peter Magirwa, and Mr Feruzi Msambichaka were still leaders of the party; the party has since held a valid meeting afresh on 29/12/2018 as per the advice of the first respondent and thus elected new leaders; and lastly, that the applicant did not show any circumstances justifying the granting of the prerogative orders sought. He urged the court not grant the orders sought.

Rejoinder submissions by the counsel for the applicant argued that the present case is distinguishable from the case **The Registered Trustees of the Civic United Front** (supra) relied on by the respondents in their submissions in reply. It was contended that the powers of the first respondent in the case relied upon by the respondents were so widely defined that they defeat the Constitution, and the law relating to political parties. I was invited once again to rely on **Emmanuel Nyenyemela and Another** (supra). Whilst bringing to rest the rejoinder submissions, the learned counsel insisted that the present case demonstrates how the first respondent went beyond the scope of his statutory powers and mandate and urged the court to grant the orders sought in the chamber summons.

From the material on the record and arguments of counsel for both parties, there is a dispute as to whether the applicant has revealed the grounds upon which the prerogative orders are sought. The learned State Attorney for the respondent invited the court to find that the application does not feature genuine grounds in the eyes of the law. The written submissions in chief by the applicant on the other hand stated that the grounds upon which the orders of certiorari and prohibition are sought are firstly, that the first respondent acted excess of his powers; secondly, that the decision was contrary to substantive legitimate expectation; and thirdly, irrationality

of the decision. In his replying submissions, the learned State Attorney for the respondents reiterated that the applicant did not show any valid ground upon which the reliefs can be granted.

On my part, the basis of the issue whether the application revealed the grounds upon which the reliefs are sought is reflected in rule 11 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. The provision of this rule requires hearing of an application for judicial review to rely only on grounds set out in a statement. As such, if a ground was not set out in the statement made in support of the application, it cannot be relied upon at the hearing of the application. In fact, rule 5(2)(c) read together rule 8(1)(a) of the above Rules (*supra*) makes it a requirement that an application for judicial review must be accompanied by grounds on which reliefs is sought.

The Statement made by the applicant in support of the present application gives detailed facts under the heading entitled "*grounds on which the reliefs are sought*". The facts alleged are of a wide range from the status of the applicant's party and the rights its entitled to as a political party to powers of the first respondent in relation to registration and cancellation of political parties and allegations relating to the circumstances pertaining to and the holding of, the invalidated meeting of the party among others. It is however only paragraphs 3(xiii), 3(xiv), and 3(xvi) of the statement whose contents are seemingly clear as to the nature of the grounds the applicant is relying upon in this application. The contents of said paragraphs read thus:

*(xiii) The 1<sup>st</sup> respondent has unlawfully and illegally interfered with the internal administration and management affairs and disturbed party's autonomy into its affairs and coherence within the party.*

*(xiv) The 1<sup>st</sup> respondent has exceeded his mandate, and power under the Political Parties Act and over the Political parties and negated his main objective in institutionalizing, nurturing and enhancing multiparty Democracy in the country.*

*(xv) .....*

*(xvi) The 1<sup>st</sup> respondent has abused his powers, authority and jurisdiction over the political parties and no reasonable person in the position of the 1<sup>st</sup> respondent could have acted in the way he has done.*

My understanding of the contents of the above paragraphs is that the applicant sought to rely on, firstly, the ground of excess of power when the first respondent made the impugned decision, and secondly, the ground of irrationality of the decision. On the strength of this finding, I find that this application hinges on two grounds, namely, excess of power and irrationality of the decision invalidating the meeting. In this respect, I do not find any basis in the application for any other ground alleged by the applicant's counsel in the written submissions. The issue is therefore whether the prerogative orders sought in the chamber summons can in the circumstances lie on any of the two grounds.

I have considered the submissions and the authorities relied on by the counsel for both sides of this application against the backdrop of the affidavit and counter-affidavit evidence, as I was pondering on whether this is a fit case to the granting the orders. There is no dispute that the thrust of this application hinges on the decision of the first respondent which invalidated the Annual General Meeting of the party of 26/05/2017. The decision traces its basis on the first respondent's letter Ref HA.322/362/11/31 dated 25/05/2017 informing the party about the complaints and the likelihood of the meeting being invalid if the complaints were not addressed. The decision was communicated to the party by the first respondent's letter referenced Ref. No. HA/322/362/11/61 dated 03<sup>rd</sup> July 2017 (Annexure DP6 to the affidavit). The other decisions which are also challenged in this application are a result of the decision that invalidated the meeting.

It is thus clear to me that the decision was made on the following premises: **One**, there were complaints on the preparation for holding the Annual General Meeting of 26/05/2017 received by the first respondent from some complainants described as members/and leaders of the party. **Two**, the first respondent scrutinized the complaints in relation to the party's constitution and formed an opinion that the said meeting was not conducted in accordance with procedures provided for under the Constitution of the party and its rules. **Three**, most of the members who attended the meeting were not lawful members of the meeting which means that the meeting

was not properly constituted. **And four**, the meeting was held contrary to the requirements of the Constitution and rules of the party to the extent that even a leader of the party who submitted the documents of the meeting to the first respondent has written to the first respondent to the effect that the meeting was not properly held.

It is also clear to me that the alleged complaints by some members or/and leaders of the party were only addressed and communicated to the first respondent. They were in the letters of the complainants referenced DP. 01/001 of 10/05/2017 from David Berege; and unreferenced letter dated 24/05/2017 from Peter Magwira (Acting Vice Chairman) which raised concern on the election of the party conducted in Dar es Salaam and objection to holding the meeting. There was similarly an alleged handwritten complaint letter by one Feruzi Msambichaka which the first respondent referred to in the letter Ref. No. HA/322/362/11/61 dated 03<sup>rd</sup> July 2017 as the basis of his decision. The material on the record looked at in relation to the respondents' counter-affidavit sworn by the learned State Attorney who represented the respondents attests that despite relying on the complaints as a basis of its decision and the advice that the complaints might lead to invalidation of the Annual General Meeting, the complaints letters were not shown, neither was any report that informed the decision communicated to the party by the letter shown herein above.

Carefully considered, the letter referenced Ref HA.322/362/11/31 dated 25/05/2017 only showed fears harbored by the first respondent on the alleged complaints and their likelihood of invalidating the meeting. Nonetheless, no specific provisions of the relevant law and the constitution and rules of the party which were likely to be breached were considered and disclosed. I am in this respect aware that the first respondent keeps record of constitutions and rules of political parties in his register and the record of parties' office bearers. Dated a day before the meeting, the contents of this letter are evident that it was then yet to be established that the alleged complaints were valid and could surely invalidate the meeting. In relation to this observation, the letter in part reads thus:

*Ofisi ya Msajili wa Vyama vya Siasa inawaasa msome na kutafakari kwa makini, malalamiko yaliyowasilishwa kwa Msajili wa Vyama vya Siasa kwa barua tajwa hapo juu, kabla ya kufanya Mkutano Mkuu uliopangwa kufanyika tarehe 26 Mei, 2017.*

***Kwani endapo itaonekana kuwa kinachoongewa katika barua za malalamiko tajwa hapo juu ni kweli na kinaathiri uhalali wa Mkutano Mkuu tajwa hapo juu, basi uongozi utakochaguliwa katika mkutano huo, pia utakuwa siyo halali na mtakuwa mpoteza mali za chama kwa kufanya mkutano usio halali.***

*Ofisi ya Msajili wa Vyama vya Siasa inaomba mzingatie ushauri huo, kwani pamoja na kuwa mnapaswa kuhakikisha kuwa, uongozi mpya wa kitaifa wa chama chenu unachaguliwa kabla muda wa uongozi wa sasa haujaisha, lakini ni lazima pia kuhakikisha uchaguzi wa viongozi wapya unakuwa halali. [Emphasis supplied].*

As the above letter was written by the first respondent on 25/05/2017, it was not in my view practical that the party could have reasonably dealt with the complaint raised prior to the holding of the meeting of the party on 26/05/2017. I am mindful that the party had already been warned by the first respondent to hold its Annual General Meeting and election of national leaders not later than 26/05/2017. The warning was in a letter of the first respondent of 06/04/2017 referenced HA. 322/362/11/24. No wonder that by a letter dated 05/06/2017, the applicant informed the first respondent that it could not immediately respond to the first respondent's letter which was received at 3.00 on 25/05/2017 as the party was then busy with the Annual General Meeting's preparations and receiving delegates of the meeting from the regions.

In so far as the letter that informed the party of the first respondent's decision to invalidate the meeting is concerned, I am of the view that it suggested two things. One, the first respondent established that the raised complaints were so genuine that they rendered the meeting invalid for violation of the law and the constitution and rules of the party. The decision was communicated by the letter dated 03/07/2017, almost five weeks after the meeting had already been held. However, no record of an inquiry report in relation to the matter which might have informed the first respondent's decision was shown. The counter-affidavit did not infer at all that such report exists. There is also no disclosure the procedure or provisions of the law and constitution and rules of the party which was/were violated. Whilst the replying

submissions by the respondents' learned State Attorney introduced an element of natural justice and argued that such right was afforded to the party prior to the making of the impugned decision, the argument seemed only to focus on the letters that the first respondent wrote to the party as opposed to disclosing the report whose findings might have led to the decision and disclosing the relevant provisions of the law and the constitution and rules of the party which were violated. In the circumstances, one wonders as to how conclusions which led to the decision were arrived at.

Two, the letter seemed also to suggest in part that there were issues which were still yet to be established that they can surely invalidate the meeting. They include the allegation that most of the members who attended the meeting were not lawful delegates of the Annual General Meeting of the party. This is evidenced by the relevant part of the letter which reads thus; *"...wajumbe wengi waliohudhuria **wanasemekana** kuwa siyo halali kiasi cha kufanya akidi ya mkutano kutotimia [emphasis added]..."*. It would seem that the first respondent relied on a handwritten letter of complaint from one, Feruzi Msambichaka which was not part of the initial complaints or shown to relate to the original complaint and also not disclosed to the applicant's party before the impugned decision was made. The relevant part of the letter in relation to the alleged hand written complaint from Feruzi Msambichaka reads thus;

*"....Napenda DP muelewe kuwa, Mkutano wenu haukufuata matakwa ya Katiba na Kanuni za chama chenu, kiasi ambacho hata kiongozi aliyewasilisha taarifa rasmi ya mkutano huo kwa Msajili wa Vyama vya Siasa na kusaini taarifa zote za chama ikiwemo fomu PP7 ambaye ni Ndugu Feruzi Msambichaka, ameandika barua kwa mkono wake kumfahamisha Msajili wa Vyama vya Siasa kuwa haukuwa halali...."*

Yet the first respondent concluded that the meeting was not held in accordance with the Constitution and rules of the party although the specific provisions of the Constitution and rules which were allegedly violated were neither explained nor mentioned. Feruzi Msambichaka who allegedly complained that the meeting was not lawful was the one who submitted the report of the Annual General Meeting along with Form PP.7 to the first respondent by a covering letter dated 29/05/2017 which

he signed as a Secretary General of the party. The reasons why the report he submitted could not be accepted as valid but his handwritten complaint remains unclear and to me raises issues of unreasonableness in the decision made. I am therefore yet to see the reasons and/or basis of the first respondent agreeing wholesale with the raised complaints at the expense of the party's position as reflected in the present application and the report of the meeting which was made available to the first respondent's office as herein below shown.

Having considered the letter which invalidated the meeting and the letter that warned the party about the possible invalidation of the meeting, it is clear to me that the complaints in the two letters which seem to have influenced the first respondent's decision are not the same and were not shown to relate to one another. While the original concern centred only on the complains on the election of the party for Dar es Salaam and unspecified objection to holding the meeting as raised by Mr David Berege and Mr Peter Magwira respectively, the letter invalidating the meeting relied on other complaints other than the party's Dar es Salaam election complains and the unspecified objection to the holding of the meeting which were not brought to the attention of the party prior to the decision being made.

In line with the above observations, the decision relied for instance on the complaints from unspecified persons (other than Mr Feruzi Msambichaka) that the meeting was not conducted in accordance with the Constitution and rules of the party. However, the relevant provisions of the constitution and the rules of the party which were allegedly violated were never disclosed and no explanation was given as to how the (unspecified) provisions and the procedures they stipulate were violated. It also relied on the allegation that the meeting did not have a proper quorum as it was not attended by lawful delegates of the meeting as complained in the written complaint from Feruzi Msambichaka to the first respondent, of which the court was not shown that the party was aware of prior to the decision being made. Particulars of the delegates who are complained to have unlawfully attended the meeting was equally missing on the record and not shown at all in the counter-affidavit. To be sure, none of the complaints alleged to have been registered to the first respondent

were shown to the court as is also the procedure adopted by the first respondent to entertain them in a manner that ensured justice to all. In this respect, I do not think that the first respondent acted reasonably and in accordance with rules of procedure which ensured justice to both sides before passing the decision.

Of significance to the present matter is that the record is clear that impugned decision was made after the applicant had already filed the relevant reports and proceedings relating to the Annual General Meeting and the changes of office bearers elected in the meeting. I have had regard to Annexure 3 to the applicant's affidavit which consisted of the report of the Annual General Meeting of 26/5/2017, the minutes and proceedings of the meeting, and the members who attended the meeting which were all accompanied by Form PP.7 (i.e Notice of Change of Office Bearers of a Political Party) and a covering letter with ref No. DP24/04 dated 29/05/2017 signed by Mr Feruz Msambichaka as Secretary General of the party. The fact that such notification and change of officer bearers were duly lodged to the first respondent was not disputed by the respondents.

My scrutiny of the minutes of the said meeting confirmed that the original concerns of the first respondent were discussed and deliberated upon in the meeting. In making such deliberations, the party noted that the complainants named by the first respondents were among those expected to attend the meeting. Yet, they chose not to attend the meeting although they were outside the venue of the meeting on the day of the meeting and earlier on the same day had sought a police intervention to stop the meeting only to be told by the police to attend the meeting and raise their concerns in the meeting. Although the fact as to the party's deliberations on the concerns is not disputed by the first respondent, the decision invalidating the meeting appeared not to have considered it. It is instructive that by a letter from the party dated 05/06/2017, and prior to the impugned decision being made, the first respondent was reminded about this fact. If at all the first respondent did consider the deliberations in the minutes, it was not shown with clear reasons why a different stance was maintained that justified invalidation of the meeting. It is also not without significance to mention that in the absence of the particulars of the alleged unlawful



delegates of the meeting, the list of the delegates of the meeting appearing in the proceedings of the meeting remains reasonably unchallenged.

I am alive that this court is entitled to investigate the proceedings of a public authority like the first respondent on any of the following grounds, apparent on the record. **One**, the public authority has taken into account matters which it ought not to have taken into account. **Two**, the public authority has not taking into account matters which it ought to have taken into account. **Three**, lack or excess of jurisdiction by the public authority. **Four**, that the conclusion arrived at is so unreasonable that no reasonable authority could ever come to it. **Five**, rules of natural justice have been violated. And **six**, illegality of procedure or decision. I am equally clear that if any of the above six grounds has been offended, the proper action of this court is to quash the decision and proceedings. See, **Sanai Mirumbe and Another vs. Muhere Chacha** [1990] TLR 54.

As pointed out earlier, the grounds upon which the application is made are that the first respondent acted in excess of its his powers when he invalidated the meeting; and that the decision which invalidated the meeting is irrational. The grounds are clearly reflected in the principles set out in the above authority. The ground as to acting in excess of power is reflected in the third principle which is on lack or excess of jurisdiction by the public authority while the irrationality of the decision is clearly reflected in the fourth principle which has it that the conclusion arrived at is so unreasonable that no reasonable authority could ever come to it. I am also satisfied that the first and second principles in the above authority also apply in certain contexts to both grounds upon which the present application is made.

In relation to the legal regime relating to political parties and the provisions which were referred to me, I am of a clear view that as the office responsible with registering political parties, keeping record of political parties in the register and receiving and registering notification and changes of office bearers of political parties and any other changes furnished by the parties, the first respondent is incidentally also entitled to consider the propriety of the changes and notifications submitted as

is for any meeting from which such changes might emanate. The first respondent was thus in my view empowered to consider the propriety of the meeting and the returns and changes filed.

However, in view of the findings of my scrutiny of the material on the record, I am not in doubt that the third respondent not only acted in excess of its powers when he invalidated the meeting based only on the allegation of the complaints he received from the individuals he mentioned in his correspondences to the party who included Mr David Berege, Mr Peter Magwira and subsequently Feruzi A. Msambichaka which were not shown to have firmly been established by a procedure that ensured justice to all, but also its decision was unreasonable in the circumstances. He acted unreasonably and in excess of his power when he considered matters which he ought not to have considered and ignoring matters which he ought to have considered as shown above and herein below.

For example, whilst the third respondent considered the complaints when it made its decision, it disregarded the details of the report of the meeting which among others deliberated on the complaints and election of national leaders of the party. Another example is that whilst the decision relied on a handwritten complaint about quorum of the meeting; it disregarded a number of relevant considerations required to be taken into account in the circumstances before passing the decision. Such relevant considerations include the list of delegates of the meeting which accompanied the report of the meeting; the provisions of the party's constitution and rules relating to the meeting; and whether the alleged handwritten complaint letter submitted to the first respondent by Mr Feruzi Msambichaka and the other complaints allegedly from other members were in the knowledge of the other side. All said, I wonder why the complainants were believed in whatever they complained about in relation to the invalidity of the meeting. As is evident from the record, I can reasonably find that the decision was merely influenced by the complaints furnished to the first respondent although there was no evidence that the complaints were established in manner that ensured justice to both sides.

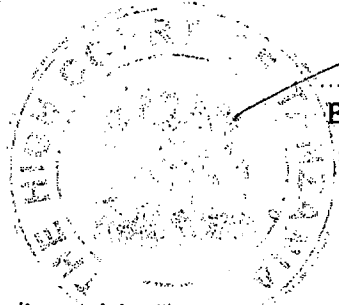
The case of **The Registered Trustees of the Civic United Front (CUF-Chama cha Wananchi vs The Registrar of Political Parties and Others** (supra) was heavily relied on by the learned State Attorney for the respondents. However, it is not in my view relevant to the present matter because its circumstances is completely different from the present case. Unlike in the present matter, there was in **The Registered Trustees of the Civic United Front** (supra) no affidavit evidence from the applicant that supported the applicant's case. In particular, there were no evidence that the allegation of holding the relevant meeting of the relevant party in the case was reflected in any returns and change of office bearers duly signed by two office bearers of the party and duly filed to the office of Registrar of Political Parties as is required by the law.

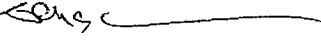
All said and done, I am satisfied that the two grounds upon which this application is made have been established on the balance of probability for reasons already shown herein above. There are therefore grounds upon which this court can exercise its discretion to grant the order of certiorari as sought by the applicant to quash the decision of the first respondent which invalidated the Annual General Meeting of 26/05/2017 and the subsequent decisions that followed the invalidation of the meeting. However, I do not find that this is a fit case to grant the order of prohibition against the first respondent as in any event the first respondent is not expected or entitled to carry out his functions in a manner that contravenes the law. I must point out at the outset that since I am satisfied that all other decisions of the first respondent were hinged on the decision which invalidated the said meeting, I need not to specifically investigate the other decisions for my findings in relation to the first decision would equally and in the same way affect the other decisions.

In the end and for the reasons given above, I find merit in the application to the extent shown above. I would therefore as I hereby do so grant the order of certiorari sought by the applicant to quash the decision that invalidated the Annual General Meeting of the Democratic Party (the party) of 26/05/2017 and the other decisions specified in the chamber summons. I would also award costs to the applicant.

I order accordingly.

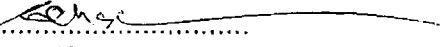
Dated at Dar es Salaam this 22<sup>nd</sup> day of July, 2019



  
Benhajj S. Masoud  
Judge

Court

Ruling delivered in the presence of Ms Loveness Dennis, Advocate for the applicant and in the absence of the respondents this 22/07/2019.

  
Benhajj S. Masoud  
Judge

22/07/2019