IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 15 OF 2018

BAGENI OKEYA ELIJAH.....1st APPLICANT
THOMAS WAYOGA.....2nd APPLICANT
NYASIGE KAJANJA NYAMWAGA.....3rd APPLICANT
ANDREW HOSTA SIWALE.....4th APPLICANT

VERSUS

THE JUDICIAL SERVICE COMMISSION.....2nd RESPONDENT
THE CHIEF COURT ADMINISTRATOR.....3rd RESPONDENT
THE ATTORNEY GENERAL.....4th RESPONDENT

RULING

28/09/2018 & 07/01/2019

Masoud, J.

The applicants were on 20/07/2018 granted leave of this court by my brother Hon. I. Arufani, J. to apply for orders of certiorari and mandamus. The applicants thereafter commenced this matter when the present application was filed on 30/07/2018. The applicants would now want this court to invoke its prerogative orders of certiorari and mandamus to quash the decision of first respondent which "retired" them from employment in the public interest from 18/01/2018 and communicated the decision to the applicants by identical letters dated 19/01/2018.

It is not without relevance to note that all the applicants were judiciary employees. The first applicant was employed as a resident magistrate on 27/06/2012; the second applicant was employed as a primary court magistrate on 21/06/2010; the third applicant was employed as a resident magistrate on 06/06/2007; and the fourth applicant was employed way back on 16/12/1990 and before his "retirement' in the public interest was working with the Judiciary as a primary court magistrate.

The application is brought under section 17(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [cap. 310 R.E 2002] and rule 8(1) (a) and (b) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. The application is supported by applicants' affidavits and accompanied by a statement which sets out grounds upon which the applicants rely for the relief of certiorari and mandamus.

Before I make further progress on this application, I must first dispose of a preliminary objection raised by the respondents. The same was to the effect that "the application was bad in law for containing facts which are different from which the leave was sought thus contravening the provision of rule 8(1) (a) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014." The submissions on the preliminary objection made by Mr Nyakiha which are on the record did not detail, identify and clarify the alleged new facts which were not part and parcel of the application for leave but which were allegedly included in the present application.

To ascertain as to whether the point raised is meritorious, one would necessarily have to consider documents which are not part of the present application and compare them with the present application. Such documents were not appended to the application. I agree with the applicants that the point raise a question of fact which needs to be proved by evidence. I am therefore settled that the point raised is not a pure point of law. I therefore overrule the objection.

The grounds upon which the applicants rely for the relief of certiorari and mandamus could be summarised as thus: That, the first respondent acted in bad faith with improper motive when it removed the applicants from service in the public interest without disclosing reasons and valid grounds amounting to alleged public interest; failure to observe the procedure under the Judiciary Administration Act, No. 4 of 2011 and the Judicial Service (General, Termination of Service and Disciplinary) Regulations, 1998 (GN No. 660 of 1998).

In relation to the failure to observe the procedure, it was averred that the applicants were not given notice to show cause why the decision should not stand against them, that the applicants were not informed of any investigation or disciplinary charges against them on which the decision was based, and that the applicants were not accorded the right to be heard.

The first, second and third respondents filed a joint counter-affidavit in response to the application. They basically opposed the application and supported the decision of the first respondent that "retired" the applicants in the public interests.

The facts giving rise to the present application as they can be gathered from the affidavits of the applicants can be stated briefly. The applicants were employees of the first respondent. They were employed as magistrates at various places. They were on various dates charged with, and prosecuted for offences relating to corrupt practices. Whereas the first and third applicants were acquitted of the charges in 2016, the second and fourth applicants were acquitted of the charges in 2014. Prior to their acquittal from the charges, all applicants had been interdicted from working.

Consequent to their acquittal, they were all "retired" from their respective offices in the public interest. In this respect, the identical letters dated 19/01/2018 which were respectively served to the applicants had it that:

> ***YAH: KUSTAAFISHWA KAZI KWA MANUFAA YA UMMA***
>
> *Tafadhali rejea kichwa cha habari hapo juu na kikao kilichofanyika na Tume ya Utumishi wa Mahakama cha tarehe 17 Januari, 2018, kilichohusu masuala ya Utumishi na ajira yako.*
>
> *2. Tume ya Utumishi wa Mahakama kwa Mamlaka iliyopewa na Katiba ya Jamhuri ya Muungano wa Tanzania ya mwaka 1977 ikisomwa pamoja na kifungu cha 33(1) cha Sheria ya Uendeshaji wa Mahakama na.4 ya mwaka 2011, imeamua ustaafishwe kwa manufaa ya Umma kwenye kazi ya Uhakimu kuanzia tarehe 18 Januari, 2018.*
>
> *3. Aidha, utalipwa haki zako kwa mujibu wa Sheria ya Mafao ya Utumishi wa Umma Sura 371 (R.E 2015). Utaratibu wa kukulipa gharama za kurejea kwenye makazi yako (Domicile Place) kutoka kituo cha kazi ulichopo sasa, yanaandaliwa kama nyaraka na taarifa zilizomo kwenye jalada lako binafsi na utajulishwa mara tu malipo yakifanyika.*

4. Nakutakia kila la heri kwenye maisha yako nje ya Utumishi wa Mahakama

Prior to their respective "retirement" in the public interest, each applicant appeared before the first respondent for a meeting. The meeting was to discuss matters relating to employment of each applicant. Each applicant was so summoned for the meeting by identical letters dated 08/01/2018 which were respectively served to the applicants. The contents of the said letters were to the following effect.

YAH: WITO WA KUFIKA MBELE YA TUME YA UTUMISHI WA MAHAKAMA

Tafadhali rejea kichwa cha habari cha hapo juu.
2. Kwa mujibu wa Ibara ya 113(4) ya Katiba ya Jamhuri ya Muungano wa Tanzania ikisomwa pamoja na Kifungu cha 29(1) (d) cha Sheria ya Uendeshaji wa Mahakama Na. 4 ya mwaka 2011 unaelekezwa ufike mbele ya Tume ya Utumishi wa mahakama siku ya Jumatano tarehe 17/01/2018 saa 6.45 mchana kwa minajili ya kuzungumzia masuala ya utumishi wako. Mkutano utafanyikia kwenye ukumbi ulioko Tume ya Kurekebisha Sheria Tanzania, Mtaa wa Luthuli Dar es salaam. Tafadhali fika bila kukosa.

3. Utalipwa posho za kujikimu kwa kuzingatia viwango vya serikali na kwa mujibu wa kanuni na taratibu. Aidha, utatakiwa kuwasilisha tiketi za usafiri wa basi ili kurejeshewa fedha za nauli katika usafiri huo.

The applicants had it that in the said meeting which lasted for a few minutes for each applicant there was no discussion held that involved each of the applicants in any way other than telling each of the applicants that the purpose of the meeting was to inform him/her the decision that had been reached against him/her by the first respondent. As such, each applicant was informed that he/she had been "retired" from his/her office in the public interest. It is such decision of "retiring" the

The applicants appeared in person unrepresented while all respondents were represented by learned State Attorneys who appeared on behalf of the respondents on various dates that the matter came before me. The matter was ordered to be disposed of by written submissions which were duly filed as per the schedule set by the court.

Looking at the applicants' submission holistically, it was clear that it was built on the same grounds upon which the applicants rely for the relief of certiorari and mandamus. In a nutshell, the submission anchored on the following. One, the decision was in contravention of natural justice, for they were "retired" in the public interest without being heard, for they were not invited to show cause why the decision should not stand against them; and they were not informed of any investigation conducted or disciplinary charge levelled against them upon which the decision was based. Two, there were no reasons disclosed that warranted the "retirement" in the public interest. And, three, the first respondent did not act in accordance with the procedure established by the law when she purportedly "retired" the applicants in the public interests.

In so far as the alleged failure of the first respondent to act in accordance with the procedure established by the law, it was particularly argued that the first respondent did not follow the procedure provided for under section 35(1) & (2) of the Judiciary Administration Act (supra) as well as regulation 22 of the Judicial Service (General, Termination of Service and Disciplinary) Regulations, 1998 (GN No. 660 of 1998). The above provisions of law were duly reproduced in the applicants' submission. The provision of section 35(1) & (2) of the above Act which was quoted by the applicants reads thus:

> *Section 35(1) The powers to remove from office or terminate the appointments of judicial officers other than the Chief Justice, Justices of Appeal, the Jaji Kiongozi, Judges of the High Court, the Chief Registrar, the Registrar of Court of Appeal and the Registrar of the High Court, shall be exercised in accordance with this section.*
>
> *(2) A judicial officer shall not be dismissed unless the Commission is satisfied that:*
> *(a) a disciplinary charge has been made and proved on a balance of probability against such officer on any or all of the following grounds-*
> *(i) misconduct incompatible with the holding of judicial office;*
> *(ii) gross negligence in the discharge of judicial duties;*
> *(iii) breach of the Code of Judicial Ethics;*
> *(iv) bad reputation incompatible with the holding of judicial office;*
> *(b) such officer has had an opportunity to answer a charge under paragraph (a); and*
> *(c) an inquiry has been held into the charge*

Likewise, regulation 22 of the Judicial Service (General, Termination of Service and Disciplinary) Regulations (supra) also quoted by the applicant stipulates thus:

> ***22. Removal in the public interest***
> *(1)Where the Commission is of the opinion that there are grounds upon which a judicial officer should be removed from office in the public interest, it shall notify the officer concerned in writing of the grounds on which, his removal is contemplated*

and invite him to show cause in writing why he should not be so removed, and shall afford him an opportunity of showing cause.
(2) .....
(3) .....

According to the submission of the applicants, the above provisions specify a procedure which must be followed by the first respondent before removing a judicial officer from office in the public interest. Clearly, the procedure limits powers of the first respondent in so far as removal of a judicial officer from office in public interest. In their further submissions, the procedure was not at all followed by the first respondent when she "retired" the applicants from office in public interest.

In line with the foregoing, the applicants pointed out how the procedure set out by the law was not complied with. One, no adequate show cause notice stating exactly the nature of the proceedings commenced against them was served to the applicants. Two, they were not invited to show cause in writing why the contemplated decision should not be imposed. And three, the first respondent did not afford them opportunity to appear at an oral hearing to show cause why the contemplated decision should not be imposed against them. And fourth, no ground was assigned for the decision imposed against them.

At any rate, it was argued, the letters dated 08/01/2018 calling upon the applicants to appear before the first respondent for the meeting, served to them two days before the scheduled meeting, did not in view of its contents meet the requirements of the mandatory provisions of the law which ought to have been adhered to by the first respondent. Equally, the meeting of 17/01/2018 involving each of the applicants

and the first respondent fell short of the requirements of proceedings envisioned under the above cited provisions as the applicants were not afforded a proper hearing and were not charged.

In a bid to bolster their case, the applicants drew my attention to a number of authorities in support of their arguments. The authorities included **Said Juma Muslim Shekimweri versus Attorney General** [1997] TLR 3; and **Gabriel Antony Dewa versus Tanzania One Mining** Revision No. 30 of 2011 High Court Labour Division (unreported); **Elia Kasalile and 20 others versus the Institute of Social Work** Civil Appeal No. 145 of 2016 (unreported) which were referred to me in relation to the right to be heard.

Furthermore, **James F. Gwagilo v Attorney General** [1994] TLR 73 and **Said Juma Muslim Shekimweri** (supra); and **Njagi Marete versus Teachers Service Commission** [2013] eKLR were cited in relation to the duty to give reasons for a decision made and particularly so when one is removed from office in the public interest. **Said Juma Muslim Shekimweri** (supra); and **Permanent Secretary (Establishments) and another versus Hilal Hemed Rashid and Four Others** [2005] TLR 121 were likewise referred to me in relation to non-existence of "retirement" in public interest under the relevant law as was arguably in the present instance. Additionally, **Sanai Murumbe v Muhera Chacha** [1990] TLR 54 was cited to support the argument that as the impugned decision was characterised by illegality, irrationality, and procedural unfairness, the court must grant prerogative orders of certiorari and mandamus.

Replying written submission by the respondents was filed by Mr Daniel Nyakiha, learned State Attorney on behalf of the respondents. It was contended that the submissions by the applicants are challenging the decision of the first respondent on merit contrary to the guidance set by the case of **Sanai Murumbe** (supra). Thus, judicial review is therefore not appropriate in the circumstances.

It was contended on behalf of the respondents that the first respondent was justified in discontinuing the employment of the applicants because she is vested with power to remove, appoint, or terminate such judicial officers from their office. The decision was to the large interest of the society, the judiciary and for the own respect of the applicants. It was argued that in reaching at the decision which was never made in bad faith, the procedure stipulated under regulation 22(1) of the Regulations (supra) was complied with and the first respondent acted in accordance with the law before removing the applicants from their respective office. Each of the applicants was respectively called for a meeting held on 17/01/2018 to discuss "the outcome of their employment." Each applicant attended the meeting and was adequately heard by the first respondent. The decision to remove each applicant from office was reached after the hearing.

It was argued by the learned State Attorney that prior to the hearing each of the applicants was required by a letter written by the first respondent to appear before her for a meeting. It was argued that when the applicants appeared before the first respondent on 17/01/2018, it was within their respective knowledge that the first

respondent was empowered to appoint, promote and discipline any judicial officer as was any of the applicants. It was also within the knowledge of each of the applicants that the meeting would involve section 29(1)(d) of the Judiciary Administration Act (supra). Thus, each of the applicants, it was argued, came prepared for a discussion regarding his/her respective service with the first respondent. For want of precision, section 29(1) (d) of the above Act provides that:

> *29(1) The functions of the Commission shall be to:*
> *(a).....*
> *(b).....*
> *(c).....*
> *(d) appoint, promote and discipline any judicial officer other than the Chief Registrar, Registrar of the Court of Appeal or the Registrar of the High Court;*

It was emphasised by the learned State Attorney that the hearing on 17/01/2018 involved the issue whether the applicants who were once charged with corruption offences and acquitted would still have the faith of the public in their action and decisions as magistrates. It was also pointed out by the learned State Attorney that the decision of the first respondent to remove the applicants from their respective office was based on the above issue, consideration having been had on large interests of the society.

As if the foregoing was not enough, the learned State Attorney called upon the court to exercise due care when it considers whether or not to grant the orders sought by the applicants. On this point the learned State Attorney relied on **Sanai Murumbe** (supra) and **Tanzania Air Services Ltd versus Minister for Labour and Others.** The latter was in relation to the duty to give reasons which was non-existent under

the common law and the power of this court to vary the common law to suit local circumstances. He also distinguished the case of **Elia Kasaile and 20 Others** (supra) arguing that unlike the cited case, in the present case the applicants' profession is regarded by the public as noble. The learned State Attorney challenged the prayer for reinstatement as the same does not reflect any of the reliefs under section 17(2) of the Law Reforms (Fatal Accidents and Miscellaneous Provisions) Act (supra).

In their rejoinder, the applicants made a detailed submission, which by and large reiterated their submissions in chief. I do not therefore with due respect, intend to summarise the submission here.

I have carefully considered the submissions made by the parties to this application. I have also carefully considered the provisions of law referred to me by the parties and the authorities which the parties have cited to support their respective positions. I have therefore formed an opinion that determination of this application rests on the issue whether the applicants have made out a case for an order of certiorari to issue.

It is evident to me that parties to this application are at one that the endeavor of the first respondent was to remove the applicants from their respective office in the public interest. It is also clear to me that parties to this application do not dispute the law and procedure applicable in removing a judicial officer from office in the public interest. It is vivid from the written submissions made by the applicants and by the learned State Attorney, on behalf of the respondents, that section 35(1)&(2) of the

Judiciary Administration Act (supra) and regulation 22(1) of the Judicial Service (General, Termination of Service and Disciplinary) Regulations (supra) are relevant provisions of the law in this application. In this regard, I am not aware of, and neither was I shown, any Regulations recently enacted under the Judiciary Administration Act (supra) that replace the Regulations enacted under the now repealed Judicial Service Act.

I am aware of the Judicial Service (Special Commission) (General, Termination of Service and Disciplinary) Regulations, G.N. No. 661 of 1998 which applied to primary court magistrates. The provision of regulation 22(1) of these Regulations is similar to regulation 22(1) of the Judicial Service (General, Termination of Service and Disciplinary) Regulations (supra) word for word save for the use of a 'magistrate' instead of a 'judicial officer'. However, by virtue of section 3 of the Judiciary Administration Act (supra) which now defines a "judicial officer" in a manner that includes any magistrate of the courts of law, I am settled that the Judicial Service (General, Termination of Service and Disciplinary) Regulations (supra) is now applicable to all magistrates as were the applicants irrespective of whether or not they were in the primary court.

In the light of the above, I agree that despite the repeal of the Judicial Service Act, the Judicial Service (General, Termination of Service and Disciplinary) Regulations (supra) which were made under the repealed Act continue to have effect and therefore regulation 22(1) of the said Regulations is still relevant to this application.

This position is by virtue of section 67(2)(b) of the Judiciary Administration Act (supra) which reads thus:

> ***67. Repeal and Savings***
> *(1) The Judicial Service Act, is hereby repealed.*
> *(2) Notwithstanding the repeal of the Judicial Service Act-*
> *(a).....*
> *(b) all orders, notices, regulations, rules, directions, appointments and other acts lawfully made, issued or done under any of the provisions of the Act and made, issued or done before the commencement of this Act, shall be deemed to have been made, issue or done under the corresponding provision of this Act and shall continue to have effect accordingly.*

My reading of the provisions of section 35 of the Judiciary Administration Act (supra), and regulation 22(1) of the Judicial Service (General, Termination of Service and Disciplinary) Regulations (supra) which were all reproduced verbatim herein above leaves me in no doubt that the provisions specify a procedure that must be complied with by the first respondent when considering removing a judicial officer from office. As such, determination of the issue whether the applicants have made out a case for an order of certiorari to issue would undoubtedly depend on how this court will resolve two issues. The first issue is whether the first respondent complied with the procedure under the above provisions of the law in "retiring" the applicants in the public interest. In other words, whether the "retirement" of the applicants by the first respondent in the public interest was tainted with illegality of procedure. I am in this respect mindful that whilst the respondents maintained in their respective counter affidavits and replying written submission made in their behalf that the applicants were removed from their office in the public interests, the record has it that the applicants were "retired" in the public interest. The second issue is whether the

applicants were denied of their fundamental right to be heard when they were "retired" from office in the public interest.

It is not in dispute that the applicants were "retired" in the public interest on 18/01/2018 by the first respondent. The "retirement" of the applicants in the public interest is evidenced by the identical letters dated 19/01/2018 which were issued to the applicants. It is also not in dispute that before each of the applicants was retired in the public interest, on 17/01/2018 each applicant attended the meeting which was called by the first respondent. This is evidenced by the identical letters dated 8/01/2018 that were issued to the applicants. In the said meeting, the first respondent was to discuss with each of the applicants "*...masuala ya utumishi....*".

It is in dispute whether the applicants knew from the letters that the first respondent was contemplating to remove them from office in the public interest, and that it was such contemplation that was a subject matter of the meeting between the first respondent and each applicant. It is also in dispute whether each applicants was in the meeting informed of the respondent's decision to remove him/her in the public interest without being heard on the first respondent's contemplation.

Upon consideration of the procedure for removing a judicial officer from office and perusal of the record, it is clear to me that the letters were issued pursuant to article 113(4) of the Constitution of the United Republic of Tanzania and section 29(1)(d) of the Act. The provision of section 29(1)(d) of the Act concerns powers of the first respondent to appoint, promote, and discipline a judicial officer. The letters informed

the applicants that the meeting was "*kwa minajili ya kujadili maswala ya utumishi...*". The first respondent did not therefore specify in the letters whether the meetings were with regard to promotion, discipline or appointment. The allegation that each applicant knew that the meeting involved the question whether the public would still have faith in them as magistrates and the wider interests of the society, judiciary and the applicants own respect just emerged from the bar from the respondents' learned counsel. It is not at all reflected in any of the record brought to my attention.

Going by the contents of the letters, I am of a firm opinion that the letters that were used to notify each of the applicants about the meeting which was to discuss "*...masuala ya utumishi...*" did not notify the applicants about the contemplated removal from their respective office as is required by regulation 22(1) of the Regulations, let alone the contemplated "retirement" in the public interest. I am equally satisfied that there was no hearing properly held in the meeting that saw each of the applicants removed from office in the public interest.

My position that the first respondent did not notify the applicants about the contemplated removal is fortified by the following reasons. One, the letters by the first respondent did not notify the applicants of the grounds on which their respective removals were contemplated. Two, the letters by the first respondent did not also invite the applicants to show cause in writing why they should not be so removed. Three, there is nothing on the record suggesting that the applicants made any written submission to the first respondent showing cause why they should not be removed from office. Four, although the applicants were then interdicted from work

for reasons of having criminal cases that were respectively pending against them which eventually ended in their favour, there was nothing in the letters that would have suggested that "...*masuala ya utumishi*..." would in the circumstances squarely mean the contemplated removals of the applicants from their office.

My finding and conclusion that each of the applicants was not afforded opportunity to be heard in the scheduled meeting is backed by the following.

Firstly, each of the applicants was not given notice of what he/she was specifically to expect so that he/she could prepare himself/herself for the meeting and defend the position he/she maintains. As shown above, for example, no single ground upon which the first respondent contemplated to remove the applicants from office in the public interest was disclosed in the letters.

Secondly, whilst there were specific averments in the affidavit of each applicant that the meeting only informed the applicants the decision that had been reached to remove them from office in the public interest and how they were all denied the opportunity to be heard before the decision was made, there was evasive denial in the counter-affidavits of the respondents. As such, there was no specific averment in the counter-affidavits as to how the hearing was if at all conducted. It was only from the bar that the learned State Attorney told the court that all applicants were heard on whether they should be removed from office in the public interest. However, the source of such information was never disclosed and no proceedings of the meeting

that saw the applicants removed from office in the public interest were produced to the court.

In view of the foregoing, I am fully satisfied that the first respondent violated the procedure relating to removal of the applicants from office and in so doing the applicants right to be heard was not met when the applicants were called to the meeting without being given information of the contemplated removal and without being invited to show cause in writing why they should not be removed from office. It is not correct to suppose that according to the procedure their right to be heard is only available to the first respondent through attendance in the meeting and making oral representation. In so far as the latter is concerned, I am fully satisfied that they were not accorded oral representation either.

Before I part with this matter, I should also point out that I was invited to find that the decision was invalid as it was not made in accordance with the law for two reasons. One, no reasons were assigned for the decision and as to what rendered the "retirement" to be of interest to the public at large. And two, whilst the applicants were all purportedly "retired" in the public interest, there was no law that provided for 'retirement' in the public interest. I earlier made it clear that the respondents' position in the counter-affidavits and replying written submission was that the applicants were removed from office in the public interest in accordance with the law.

I have looked at the record before me whilst benefiting from the guidance offered by **James Gwagilo** (supra) and **Said Juma Muslim Shekimweri** (supra). I am satisfied that the decision that the applicants were now challenging is reflected in the letters dated 19/01/2018 that the applicants were given by the first respondent. Indeed, there were no reasons that were disclosed by the first respondent for the decision and which rendered the "retirement" to be of interest to the public at large. On the authorities cited above, the failure to disclose reasons, as was the case in this matter, is fatal to the decision. In addition, the applicants were, contrary to the procedural requirements, purportedly "retired" in the public interest as opposed to being removed from office in the public interest. As would transpire below there is nothing like retirement of a judicial officer in the public interest in the law, but compulsory retirement.

In so far as compulsory retirement is concerned, the only legislative provisions which permit such retirement is regulation 11 of the Judicial Service (General, Termination of Service and Disciplinary) Regulations (supra) which would in appropriate cases be utilised only for the purpose of compulsorily retiring a judicial officer for reasons other than medical grounds. The provisions would only be utilised after the judicial officer has been notified about such consideration and asked to make any written representation on such step. In view of my previous observations and findings which are reflective of the written submissions of the parties, it is clear that the applicants' employment discontinuation was purportedly done under the procedure governing the removal of a judicial officer in the public interest.

Even if it were to be argued that the applicants' retirement in the public interest meant compulsory retirement in the public interest, the argument would not in my view hold water. I say so because of the following reasons. One, there is no material showing that the applicants were notified of the consideration for their compulsory retirements. Two, there is nothing showing that the applicants were given room to make written representations on such consideration. Thus, going by the requirements of the provisions on compulsory retirement, it would still be clear that there was violation of procedure and rules of natural justice.

All said and done in respect of a prayer for an order of certiorari, I would make a final finding and hold as I hereby do so that the first respondent neither complied with the procedural requirements of the law when she retired the applicants from office in the public interest, nor afforded the applicants an opportunity to present their respective written representations why the decision should not be taken against them, and nor a hearing in the scheduled meeting. I accordingly find that the applicants have made out a case for an order of certiorari to issue for the decision of the first respondent to be removed into this court for the purpose of being quashed. I so find and hold as I am content that the law is settled that prerogative order of certiorari can issue where an applicant establishes that he was denied his right to be heard or where there was illegality of procedure or decision as was in the present instance. See **Sanai Murumbe** (supra).

Having found that the applicant can benefit from the prerogative order of certiorari, it is important to determine whether the applicants have laid out a basis for a grant

the law on the basis of my decision.

In the final result, the applicants have made out their case; and accordingly I grant the prayer for an order of certiorari to quash the decision of the first respondent that "retired" the applicants in the public interest. Consequently, an order of mandamus is issued only to the extent of directing the first respondents to act in accordance with the law on the basis of my decision in this application. The applicants will have the costs of the application. Ordered accordingly.

Dated at Dar es Salaam this 7th day of January 2019.

.....

Benhajj S. Masoud

Judge

7/1/2019

Coram: Hon. Sarwatt Dr.

For 1st Applicant – Present 1st only

For the 2nd Applicant
For the 3rd Applicant — Absent
For the 4th Applicant

For 1st Respondent – Gaudensia Bruno – HR

For the 2nd Respondent – Karama Omary – Legal Officer

3rd Respondent Nyakiha Daniel – State Attorney

CC: Rehema.

Court:

Ruling Delivered in the presence of parties as per Coram.

Right of appeal fully explained.

THE HIGH COURT OF TANZANIA

S.S. Sarwatt

DEPUTY REGISTRAR

7/1/2019