

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY)
AT DAR ES SALAAM
MISCELLANEOUS CIVIL APPLICATION No. 257 OF 2019
(Originating from Civil Case No. 87 of 2019)

UMOJA WA MADEREVA WA

MABASI TANZANIA (UWAMATA) APPLICANT

Versus

SURFCE MARINE TRANSPORT

AUTHORITY (SUMATRA) RESPONDENT

RULING

13th November, 2019 – 21st February, 2020

J. A. DE-MELLO J;

Sometimes in September 2019, I had attended to objections raised by the Respondent's Counsel on four points of law, as I dismissed all of them paving way for hearing of this substantive Application.

The Applicants have moved the Court vide **Chamber Summons** under **section 2(3)** of the **Judicature and Application of Laws Act [Cap. 358 R.E 2002]** and, **section 95 of the Civil Procedure Code R.E 2002]**for the following prayers;

- 1. The Honorable Court is pleased to make an order that the act of the Respondent or its Agents, Workmen and employees of penalizing, fining and issuing notification to the public bus**

drivers, the Applicant's beneficiaries is illegal and unlawful as it against the laws of the land.

2. This Honorable Court be pleased to order the Respondent or its agents, workmen and employees to stop the act of penalizing, fining and issuing notification to the public bus drivers while are in the course of performing their duty until final determination of the main suit.

3. Costs of the suit.

Affidavit was affirmed by **Abdallah Lubala** the Secretary General of the Applicant deponing fifteen (15) facts in support whereas; the Counter Affidavit sworn by **Alice Mtulo, State Counsel** opposing the Application with ten (10) facts. Oral submissions was preferred of which the Court humbly granted as **Counsel Nestor Mkoba** taking the lead in support of the Application.

In his submission he is registering harassments by the Respondents by abusing the **Transport Licensing Act Cap. 317** one which applicable to Bus owners as opposed to the Public drivers. That the act affects the welfare of the drivers from their own pockets notwithstanding the defects if at all has nothing to do with them but the ones owning the buses, their employees, disregarding the fact that even their salary(ies) is minimum. Further that; while this is happening its multiplier effect trickles down to innocent Passengers shown in paragraphs... for what transpired to Bus Registration No. **T175 DCA and, J985 DPB**. Quite apparent the Counter Affidavit alludes to the concerns as seen under **paragraphs 5, 6, 7, & 8**. It is thus their prayers for restraining orders until the main suit is determined.

Erigh, State Attorney submits as he prays the Counter Affidavit by his colleague Alice to be adopted. He submitted that State Notification commonly issued is within the law, as provided for under **section 47(1) (a)** of the **Transport and License Public Service [Cap. 317]** against offenders on wheels and, not owners. Regulation **50(a)** and **(b)** is clear on this he asserts. According to **section 5(1)** of **Surface and Marine Transport Regulatory Authority Act No. 9** the rationale is to control

speed for the safety of the passengers, drivers, and the vehicle itself that the owners own. The **Transport License Public Service Vehicles Regulatory of 2012 Regulation 23(2)** read together with **Regulation (3) Interpretation clause** define crew, to include drivers, conductors and any other employee of the licensee working in the Public Service Vehicles or School Bus while en-route. SUMATRA, the body corporate is one responsible for the regulating surface and marine. With regard to the second prayer, Counsel observes the misconception derived from the case of **Attilio vs. Mbowe (1969) HC No. 289** which includes;

1. Existence of **Prima Facie case**. That depicts issue serious enough to be tried.
2. The existence of **Irreparable Injury** likely to be suffered, in which drivers are at liberty to drive as they wish, notwithstanding notification or not but, without compromising the rights of passengers as a result of accident contrary to the Respondents cause that protecting interest of countries, fourteen day time frame given for compliance.
3. **Balance of Inconvenience** likely to be caused for withholding than granting, leading the government to suffer loss than the Applicant jeopardizing Public interest and life to life. Consideration is given to the public rights as opposed to private. The case of **Alhaj Mhidini A. Ndolange and Alhaj Ismail Aden Rage vs. Registrar of Sports and Sports Association and Others Miscellaneous Case No. 54 of 2000 page 7** was referred.

It is Counsel further observation that in the absence of damages a requirement in such Reliefs and as laid down in the case of **Gella vs. Casman Brown and Company Ltd, EALR 1973 pg 358**, concluding that, the Application has no basis and ought to be dismissed with costs.

Interjecting in assisting **Counsel Erigh is Mwadawa Sumatra's Legal Counsel** reminding the Court that all public commercial drivers are under **SUMATRA** as opposed to Home Affairs.

In his reply **Counsel Nestor** agrees to the existence of law but one which is bad and, in conflict. Counsel Erigh objected it not being subject of the Application at stake. The Court sustained the same. He further alluded the **Attilio vs. Mbowe (1969) HC No. 289** to be relevant and one for such prayers.

Upon determination of the matter at hand, the nature of the order sought is one of those which lies with the Court's discretionary as to whether to grant or not. I need not reiterate the rationale that the In case of **Attilio vs. Mbowe (1969) HC No. 289**, emphasized let alone other similar ones as hereunder;

- **Attilio vs. Mbowe (1969) HC No. 289.**
- **Suryakant D. Ramji vs. Savings and Finance LTD and 3 Others, High Court Commercial Division, Dar es Salaam, Civil Case No. 30 of 200 (unreported)**
- **E.As Industries LTD vs. Trufoods Limited (1972) E.A 420.**
- **Giella vs. Cassman Brown [1973] E.A 358**

- **Colgate Palmolive Company vs. Zakaria Provisional Stores and 3 others, High Court, Dar es Salaam, Civil Case No 1 of 1997.**
- **CPC International Inc. vs. Zainabu Grain Millers LTD Civil Appeal No. 49 of 1999 CA**

It is suffices to say that, the facts disclosed in the Applicant's Affidavit and in the oral submissions , raises series of necessary questions to be determined by the Court in the main suit to be able to analyse and evaluate the facts, law and evidence in view of determining the rights of both Parties. I am therefore accordingly consider the existence of a Prima Facie case, which is the first condition for the relief sought and hence satisfactory. I understand that granting Temporary Injunction is to prevent irreparable injury to either party but the balance of who will suffer more, is to be taken into account. be on the Applicant while the case is still pending. It aims on preventing the status quo of the parties. The case of **Noormohamed Janmohamed vs. Kassail Virji Madahni (1952)19 EACA 8**. In considering the question of irreparable loss the Court has to look on the Application, the position of law and, the whole circumstance surrounding it. I see some logic as to the suffering of both but more so that of the Applicant alleging to be victimized and them being employees only. In the event the, fining and issuing notification to public bus drivers continues un checked thereby by forcing drivers to pay penalty, more suffering will occur to even the passengers. On balance of convenience, and considering the above, comparatively it is the same Applicant one to suffer. Having weighed the facts in totality, I will hold that this is a fit case

for grant of Temporary Injunction pending the determination of the main suit.

This Application has merit, and the prayers are granted, with costs in due course.

J. A. DE-MELLO

JUDGE

21st February, 2020