

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

MISCELLANEOUS CIVIL CAUSE NO. 10 OF 2019

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI,
PROHIBITION AND MANDAMUS**

AND

**IN THE MATTER OF AN ORDER OF THE DISTRICT COMMISSIONER ROMBO
DISTRICT, ORDERING ALL HOLILI WARD RESIDENTS OF KAMBA TRIBE TO
REGISTER WITH IMMIGRATION OFFICE, KILIMANJARO REGION AS
IMMIGRANTS (WALOWEZI)**

AND

IN THE MATTER OF TANZANIA CITIZENSHIP ACT, 1995

BETWEEN

JOHN MNYAU MUYOMBO1ST APPLICANT

BERNARD JONATHAN MUYOMBO 2ND APPLICANT

ALPHEUS MUTALA NYOOKA 3RD APPLICANT

MATHEW KIMUYA MANDU 4TH APPLICANT

AND

**THE DISTRICT COMMISSIONER ROMBO DISTRICT1ST RESPONDENT
REGIONAL IMMIGRATION OFFICER**

KILIMAJARO REGION 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

25th June, 2020 & 7th August, 2020

RULING

MKAPA, J:

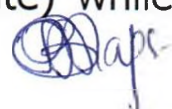
This is an application for leave to apply for orders of Certiorari, Mandamus and Prohibition brought under **section 17 (2) of**



the Law Reform (Fatal Accidents and Miscellaneous Provision) Act, Cap 310, R.E. 2002, Rules 4, 8 (1) (a) of the Law Reform (Fatal Accidents and Miscellaneous Provision) (Judicial Review and Procedures and Fees) Rules, 2014 (GN No. 324 of 2014). The application is supported by 1st, 2nd and 3rd applicants' sworn affidavit which respondents disputed and raised a preliminary objection on points of law as follows;

1. That, the application is time barred.
2. That, the affidavit in support of the application is fatally defective for contravening Order XIX Rule 3 of the Civil Procedure Code, Cap 33 R.E. 2002.
3. That, the application is incompetent for contravening Rule 8 (1) of the Law Reform (fatal accidents and Miscellaneous Provisions) (Judicial Review Procedure and fees) Rules, 2014, GN No. 324 of 2014).
4. That, the application is misconceived, incompetent and bad in law for being frivolous, vexatious and amounting to an abuse of the court process as the applicant has no cause of action against the respondent.

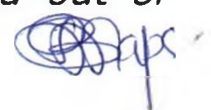
Both parties consented and the court ordered the objection be heard by way of filing written submissions. The applicant was represented by Mr. Patric Paula (learned advocate) while the



respondent was represented by Ms. Jacqueline Kinyasi also learned advocate.

Arguing in support of the first point of objection, Ms. Kinyasi submitted that rule 8 (1) (a) of GN No. 324 of 2014 provides that an application for judicial review shall be made within fourteen days from the day leave was granted. The same position was also observed in the case of **Tancan Mining Company Ltd V Minister for Minerals, the Mining Commission and the Attorney General**, Misc. Civil Application No. 2 of 2020 HC Dsm (unreported). However, Ms Kinyasi argued that, the applicant filed this application on 31st October, 2019 while leave was granted on 16th October, 2010 thus the application is time barred as the 14 days time frame had lapsed on 30th October, 2019. Ms. Kinyasi urged the court to dismiss this application as it was held in the case of **Hezron M. Nyachiya V Tanzania Union of Industrial and Commercial workers & Anor**, Civil Appeal No. 79 of 2001, CAT at Dsm (unreported) where the Court at page 10 held that;

"...it is our considered view that, Section 3 of the Law of Limitation applies also in respect of proceedings instituted under the (Fatal Accidents and Miscellaneous Provisions) Ordinance. Thus, the appellant's application which was instituted out of



time without leave of the Court, deserved to be dismissed."

On the 2nd objection learned counsel submitted that affidavit for use in court, being a substitute of oral evidence, should contain statement of facts and circumstances to which the witness deposes either of his own personal knowledge or from information to which he believes to be true. She cited **Order XIX Rule 3 (1) of the Civil Procedure Code** and the case of **Uganda V Commissioner of Prisons Ex Parte Matovu**, 1966 E.A 514 which laid the above principle.

She contended that applicants' affidavits contains legal arguments and conclusion contrary to the requirement of the law and the same should be struck out with cost.

Regarding the 3rd objection, Ms. Kinyasi argued that the application is incompetent for contravening **Rule 8 (1) (a) of GN No. 324 of 2014** which makes it mandatory for the application to be supported by chamber summons, affidavit and statement in respect of which leave was granted. However, this application is made by chamber summons and affidavit without the statement of leave hence the same is incompetent and incomplete.

On the last objection Ms. Kinyasi cited the case of **John Byombalirwa V Agency Maritime Internationale**

(Tanzania) Ltd 1983 TLR 1 (CA) in which cause of action was defined to mean essential facts necessary for the plaintiff to prove his/her case.

She further argued that the law requires a person aggrieved by any decision or order to attach the same as observed in the case of **Rehema Ally Kinyaka V Tanzania Institute of Accountancy** Misc. Civil Application No. 21 of 2018 HC Dsm (unreported) where the court struck out the application since the decision to be reviewed was not annexed. It was therefore Ms. Kinyasi's argument that the applicant attached Annexure AP-12 in 1st applicant's submission to support their claims. Such annexure is a public notice to whoever is concerned (kwa yeyote anayehusika) titled 'Zoezi la Uandikishaji Wahamiaji Waloezi' thus the same is not specifically addressed to the applicants. Ms. Kinyasi finally submitted that the applicants do not have a cause of action against the respondent hence their application is abuse of court process and the same should be struck out. She prayed that objection raised be sustained and the application be dismissed with cost.

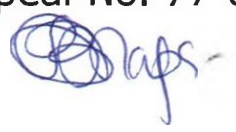
Contesting the objections raised, Mr. Paul for the applicants submitted against the 1st objection that from 17th October, 2019 when leave was granted, 14 days lapsed on 31st October, 2019 therefore the application is within time. On the second objection,



Mr. Paul contested that, affidavits for judicial review should state the illegality alleged and how the applicants are affected hence the applicants' affidavit supporting the application are proper in law as it was held in the case of **Phantom Modern Transport (1985) Ltd V D. T. Dobie (Tanzania) Ltd**, Civil Reference No. 15 of 2001 and 3 of 2005, CAT.

Contesting the 3rd objection, Mr. Paul argued that, preliminary objection must be purely on point of law and not facts as was observed in the celebrated case of **Mukisa Biscuit Manufacturing Company Ltd V West End Distributors Ltd** (1969) E.A. 696. He argued that, the application is properly supported by affidavit and chamber summons and a statement which cannot be argued as point of laws as they are facts.

Lastly Mr. Paul submitted that, the application has disclosed cause of action as against the respondents as per John Byombalirwa case (supra). He argued that the applicants were affected without being heard, and that the respondents' acts sparked element of discrimination against the applicants. Further that the case of Rehema Ally Kinyaka (supra) cited with authority the case of **Emma Bayo V Minister of Minister of Labour and Youth Development and others**, Civil Appeal No. 77 of 2012 CAT Arusha which held that;

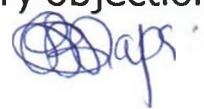


"... at leave stage is where the applicant shows that he or she has sufficient interest to be allowed to bring the main application." [Emphasis supplied]

It was Mr. Paul's contention that the administrative orders were inter alia issued via oral announcement which cannot be attached but rather the written announcement is what they attached. That, since the applicant are adversely affected by the act or omission of the respondents' act this matter is therefore fit for judicial review as provided under Rule 4 of GN No. 324 of 2014. To support this contention he cited the case of **Jeremiah Mtobesya V Attorney General** [2006] TLS Law Report 468 where it was held inter alia that;

"where justice requires the courts to endeavour to do substantive justice instead of relying on undue technicalities..."

Mr. Paul urged this court not to dwell on undue technicalities advanced by the respondents but rather apply overriding objective principle which encourage courts to do substantive justice and determine this matter on merit as enshrined in the **Written Laws (Misc. Amendments) (No. 3) Act 2018** (Act No 8 of 2018). He therefore prayed that the preliminary objection raised be overruled with cost.



In her brief rejoinder, Ms. Kinyasi maintained her submission in chief and emphasized that the application is time barred and the applicant's affidavit is incurably defective and the same should be dismissed with cost.

Having considered the competing arguments for and against the objections I think the question is whether the objections are tenable in law.

To begin with the first objection on whether the application is time barred, Rule 8 (1) (b) of GN. No. 324 of 2014 is categorical on time limit as follows:-

"8.-(1) Where a leave to apply for judicial review has been granted, the application shall be made-

(a) NA

(b) Within fourteen days from the day of the leave was granted."

In the instant case, leave to file this review was issued on 16th October, 2019 while this application was filed in this court on 31st October, 2019. By virtue of section **60 (1) (b) of The Interpretation of Laws Act, Cap 1**, [R.E. 2019] the date 16th October, 2019 when leave was granted by this court is excluded. Computing from 17th October, 2019 to 31st October, 2019 is fifteen days to wit; 17,18,19,20,21,22,23,24,25,26,27,28,29,30 and 31. It is plain clear that the required time for filing lapsed on

30th October, 2019 thus the application was late by one day. The case of **Hassan Bushiri V Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 is illustrative on the requirement of accounting every day of delay when the Court held as follows:-

*"Delay, of **even a single day**, has to be accounted for otherwise there **would be no point of having rules prescribing periods within which certain steps have to be taken**".*

That being the position of the law, as the applicant has failed to account for the one day delay this application is indeed time barred. In my view the finding on the first point of objection alone suffices to dispose of this application. Consequently, I struck out the application with no order as costs.

It is so ordered.

Dated and Delivered at Moshi this 7th day of August, 2020.




S.B. MKAPA

JUDGE

07/08/2020