

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

MISC. CIVIL APPLICATION NO 31 OF 2019.

(Arising from Miscellaneous Cause No. 21 of 2019)

**IN THE MATTER OF THE CONSTITUTION OF THE UNITED REPUBLIC
OF TANZANIA, 1977 AS AMENDED FROM TIME TO TIME [CAP 2 R.E.
2002]**

AND

**IN THE MATTER OF THE BASIS RIGHTS AND DUTIES ENFORCEMENT
ACT, [CAP 3 R.E.2002]**

AND

**IN THE MATTER OF PETITION TO CHALLENGE THE PROVISIONS OF
SECTIONS 2, 3 (3), 3A, 14(6), 31 (1), 400A OF THE COMPANIES ACT,
AS AMENDED, SECTIONS 4 (1) (1) (J) (3) (4), 4A, 8A, 17(3), (4), (5)
(6)AND (7), 29 (1) (B), 31 (C) OF THE NON-GOVERNMENTAL
ORGANISATION ACT, AS AMENDED, SECTIONS 38 OF THE
MISCELLANEOUS AMENDMENT 2, 3, 4, 5, 7, 8, (2) (6), 10, 14, 25 (1),
26 AND 27 OF THE SOCIETIES ACT AS AMENDED, SECTIONS 1A OF
THE TRUSTEES INCORPORATION ACT AS AMENDED AS BEING
UNCOSTITUTIONAL**

BETWEEN

CENTRE FOR STRATEGIES LITIGATION LIMITED 1ST APPLICANT

CHANGE TANZANIA LIMITED 2ND APPLICANT

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

REGISTRAR OF COMPANIES 2ND RESPONDENT

REGISTRAR OF NGOs 3RD RESPONDENT

Date of last Order: 18/10/2019.

Date of Ruling:10/02/2020.

RULING:

MAGOIGA, J:

The applicants, CENTRE FOR STRATEGIC LITIGATION LIMITED and CHANGE TANZANIA LIMITED by way of chamber summons accompanied with certificate of urgency instituted the instant application under the provisions of Article 108 (2) of the Constitution of the United Republic of Tanzania of 1977 as amended, sections 2(1), 2(3) of the Judicature and Application of Laws Act, [Cap 358 R.E. 2002] and Rule 2(3) of the Basic Rights and Duties Enforcement (Practice and Procedure) Rules, G.N. 304 of 2014 against the above named respondents praying for ex-parte order of maintaining the status quo of the registration of the 1st and 2nd applicants registered under the Companies Act, Cap 212 be maintained pending the determination of the hearing of this application inter-parties, in case the matter is heard after 31st August 2019, then this Court be pleased to issue a mandatory restorative orders against the respondents and restore the registration of the applicants registered under the Companies Act, Cap 212 pending the determination of this application inter-parties, the injunction be issued against the respondents or their agents, assignees, workers or employees from the implementation of the provisions of sections 2, 3(3), 3A, 14(6), 31(1), 400A, of the Companies Act, Cap 212 as amended, sections 2, 4 (1), (i),(j), (3), (4), 4A, 8A, 17(3), (4), (5),(6), (7), 29(1) (b) , 31(c) of the Non-Governmental Organizations Act, Cap 56 as amended,

sections 2, 3, 4, 5, 7, 8(1) (a), 8(2) (6), 10,14, 14(a) 17(b), 25(1), 26, 27, 31(1), 31(2), 38 (Miscellaneous Amendments) 2, 3, 4, 5, 7, 8(2) (6), 10, 14, 25(1), 26, 27, of the Societies Act, Cap 337 as amended, section 1A of the Trustee Incorporation Act, Cap 319 pending the determination of the main application, any other relief or orders this Honourable court deems fit to grant and each party to bear its own costs.

The chamber summons was accompanied by the affidavits of Mr. Deusdedit Valentine Rweyemamu and Mshabaha Hamza Mshabaha stating the reasons why the intended prayers should be granted.

Upon being served with the chamber summons and accompanied affidavit, the respondents filed their respective counter affidavits stating the reasons why the prayers contained in the chamber summons should not be granted. Simultaneously, the learned Principal State Attorney by way of preliminary objections challenged the competency of the instant Misc. Civil application on three grounds which are subject of this ruling. According to the learned Principal State Attorney, the instant Misc. Civil application is incompetent on the following grounds, namely:-

1. The petition is bad in law as the Petitioners have no locus standi.
2. The prayers are unmaintainable as the matter has been overtaken by events

3. The affidavit in support of the application is incurably defective for containing untruth statement contrary to Order XIX Rule 3 of the Civil Procedure Code [Cap 33 R.E. 2002] and as such prayed that the instant application be struck out with costs.

When the court was fully constituted, I was appointed by the chairperson of the panel pursuant to section 10 (1) of Cap 3 to deal with these preliminary matters and by consent of all parties' counsel, I ordered that these preliminary objections be argued by way of written submissions. The respondents have the legal services of Mr. Stanley Kalokola, learned State Attorney and the applicants have the legal services of Mr. Mpare Mpoki and Daimu Halfani, learned advocates. I have had an opportunity to read their respective written arguments for and against the preliminary objections and am truly indebted and commend them for their brilliant research and arguments made. I thus record my sincere gratitude to both of them and in the course of my ruling, I will be referring to them here and there, but where I will not be able, it suffices to say same are given the weight they deserve. However, am very sorry to the parties for being unable to deliver this ruling as scheduled for reasons beyond my control. With the foregoing introduction and apology, the task of this Court now is to determine the merits or otherwise of the preliminary objections as argued.

After going through the three limbs of objection and the written submissions for and against the preliminary objections raised, am inclined to determine the second limb of objection, which raises a very sensitive legal issue of how to deal with operative law and the prayers sought in the chamber summons.

The second limb of objection was to the effect that the prayers are unattainable as the matter has been overtaken by events. The thrust of the learned Principal State Attorney's submissions are that; one, the impugned Written Laws (Misc. Amendments) Act, 2019 which the applicants seek to challenge is already in force since 30th June 2019 when H.E. The president of the United Republic of Tanzania assented and as such the order for maintenance of status quo becomes futile for being overtaken by events. Two, by failure to comply with the provisions of section 6 and 8 of the said Written Laws (Misc. Amendments) Act, no.3 of 2019, the applicants were by operation of law deregistered from the Register of Companies for failure to comply with the two months grace period provided by the law. According to the learned Attorney, the applicants have already been removed from the register of Companies. Three, that no court has so far declared the said amendment unconstitutional or void, and as such no court has jurisdiction to grant the orders sought without first declaring the amendment unconstitutional or void. And it was his argument that if the court will grant the prayers it will amount

to discriminating other companies that have complied with the law. The learned Principal State Attorney cited the case of SHABIR EBRAHIM BHAIJE AND 2 OTHERS Vs. SELEMAN RAJAB MIZINO AND ANOTHER, CIVIL APPLICATION NO. 40 OF 2007, CAT (DSM) (UNREPORTED) to buttress his point that the applicants' application have been overtaken by events.

On the other hand, the applicants' counsel in reply to the submissions by the learned Attorney submitted strongly that this point ought to be argued as an issue in the application on merits and further that this point of objection do not qualify to be a pure point of law. According to them, to entertain it at this stage will tantamount to arguing the application as one has to explain all the events and its implications. Once the events are established, the court will embark on the effects of the prayers and whether the court can grant the prayers or issue alternative prayers as per prayer D in the chamber summons as was done in the case of ZUBERI AGOSTINO Vs. ANICET MUGABE [1992] TLR 137. So, the learned counsel for applicants submitted that whether or not one of the prayers have been overtaken by events is not a pure point of law as amply stated in the case of MUKISA (supra). The learned counsel for applicants, however, admitted that the impugned provisions have not been amended or declared unconstitutional and void by this Court. On that note the learned counsel invited this court to overrule the second limb of objection.

In rejoinder the learned Attorney considered the submissions by learned counsel for applicants as baseless and that the holding in the case of ZUBERI AUGOSTINO Vs. ANICET MUGABE [1992] TLR 137 and in the manner in which other prayers were granted is distinguishable from the application we have. The learned Attorney maintained his earlier position of his submissions and added that the avenue available after the impugned provision are assented was for the applicants to challenge their constitutionality and not by way of injunction, restorative mandatory orders and maintenance of the status quo as these are not prayers which this court cannot grant to lawfully assented law by the president.

A further reply of the learned Attorney was that the sought orders have nature of prerogative writs which this court is barred by the law to invoke them under section 8(4) of Basic Rights and Duties Enforcement Act. Therefore, according to the learned Attorney, the prayers of injunction, restorative mandatory order and maintenance of status quo are not within the domain of constitutional petitions and as such untenable for all intents.

Having carefully considered the rival submissions of both rival learned counsel on this point, I find the following not in dispute; One, there is no dispute that Written Laws (Misc. Amendment) Act 2019 is an Act of parliament and was assented by the president on 30th June 2019 and as such is operative law in the

United Republic of Tanzania. Two, there is no dispute that application no 31 of 2019 emanates or arises from Misc. Cause No. 21 of 2019 which is a constitutional petition challenging the constitutionality of the Written Laws (Misc. Amendments) Act, No. 3 of 2019 which amended the provisions of the Companies Act, Cap 212, the Non-Governmental Organization Act, Cap 56, the Societies Act, Cap 337 and Trustees' Incorporation Act, Cap 318 among others.

The above undisputed facts will assist this court to do justice in determining this point of objection. The immediate issue that one can ask is whether the law that has undergone all stages to become operative can be halted by way of maintaining status quo, mandatory restorative orders and injunctions. Having considered the nature of the prayers as correctly submitted by the learned Attorney, I fully agree with him that these kind of prayers are not tenable in the circumstances as are barred under the provisions of section 8 (4) of the Basic Rights and Duties Enforcement Act, Cap 3 R.E.202. The said provision provides that:

“ For the avoidance of doubt, the provisions of Part VII of the Law Reforms (Fatal Accident and Miscellaneous Provisions) Act, which relate to the procedure for and the power of the High Court to issue prerogative orders shall not apply for the

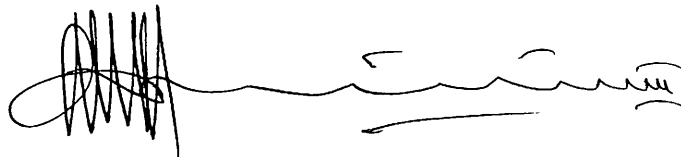
purposes of obtaining redress in respect of matters covered by this Act.”

Since it is undisputed fact that the constitutional petition No. 21 of 2019 is pegged on the Basic Rights and Duties Enforcement Act, among others, no way such prayers can be maintained in this court through this means. Having regards to the provisions of section 8 (4) above, am satisfied that the arguments by the learned counsel for applicants that so long as there is breach then the court has to entertain is less than convincing and is devoid of any useful legal backup. Am fortified with my stance because the applicants' counsel appear to have failed to take into cognizance of the assented law and its effect and how to go about. The only way to deal with a law that has come into force is by way of challenging its constitutionality in prescribed way and not otherwise. The preferred Misc. Application No. 31 of 2019 to my opinion was preferred out of ignorance and context in the circumstances of this constitutional petition. On 30th June, 2019 when the said law was gazzeted and assented, no way it can be faulted by way of maintaining status quo, mandatory restorative orders and injunctions in our jurisdiction. That said and done. I find the instant application misconceived and untenable in the circumstances and render the instant application incompetent.

The above holding suffices to dispose of this application without engaging into other arguments as they definitely become of no use or are of academic but futile exercise. The application is accordingly struck out. Each party shall bear his own costs.

It is so ordered.

Dated at Dar es Salaam this 10th day of February 2020.

A handwritten signature in black ink, consisting of a series of vertical strokes followed by a long horizontal stroke with several smaller loops and a final flourish.

S. M. MAGOIGA

JUDGE

10/02/2020