

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

AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 26 OF 2019

SELEMAN KASEMBE TAMBALA.....APPLICANT

VERSUS

**THE COMMISSIONER
GENERAL OF PRISONS.....1st RESPONDENT**

**THE PERMANENT SECRETARY,
MINISTRY OF HOME AFFAIRS.....2nd RESPONDENT**

THE ATTORNEY GENERAL.....3rd RESPONDENT

RULING

Last order and ruling 26/02/2020

Masoud, J.

Having obtained leave to file an application for judicial review, the applicant herein filed this application for prerogative orders of certiorari and mandamus against the decision of the first respondent whose details were averred in the applicant's affidavit and the statement of facts accompanying the application.

Brought under section 2(3) of the Judicature and Application of Laws Act [cap. 358 R.E 2002], rule 8(1)(a)(b), (2),3 and 5 of the Law Reform(Fatal Accidents and Miscellaneous Provisions)(Judicial Review Procedure and

extend or apply, shall be exercised in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the twenty-second day of July, 1920, and with the powers vested in and according to the procedure and practice observed by and before Courts of Justice and justices of the Peace in England according to their respective jurisdictions and authorities at that date, save in so far as the said common law, doctrines of equity and statutes of general application and the said powers, procedure and practice may, at any time before the date on which this Act comes into operation, have been modified, amended or replaced by other provision in lieu thereof by or under the authority of any Order of Her Majesty in Council, or by any Proclamation issued, or any Act or Acts passed in and for Tanzania, or may hereafter be modified, amended or replaced by other provision in lieu thereof by or under any such Act or Acts of the Parliament of Tanzania:

Provided always that the said common law, doctrines of equity and statutes of general application shall be in force in Tanzania only so far as the circumstances of Tanzania and its inhabitants permit, and subject to such qualifications as local circumstances may render necessary.

It is clear to me that the above provision would have been applicable if there was no specific provision of law that empowers this court to deal with applications for prerogative orders. Very unfortunate to the applicant, section 17(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act (supra) provides for the jurisdiction of this court in applications for prerogative orders as is the present application. Thus, the applicant ought to have cited section 17(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act (supra) to move the court to entertain the application. The omission is fatal to the application as it touches on the jurisdiction of the court.

I agree with the counsel for the respondents that the rules cited by the applicant do not move this court to deal with the application. The rules only relate to the form that the application brought under the relevant provision of law should take.

In conclusion and having had regard to the circumstances of the applicant, I hereby struck out the application with no order as to costs. It is so ordered.

Dated at Dar es Salaam this 26th day of February 2020.


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B. S. Masoud
Judge

Court

Ruling is hereby delivered in the presence of Mr S. Mahenge, State Attorney for the respondents, and the applicant present in person this 26th February 2020.

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B. S. Masoud
Judge

26/02/2020