IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 39 OF 2020

ELIZABETH NDAMBALA.....APPLICANT

VERSUS

THE POLICE FORCE IMMIGRATION
AND PRISON SERVICECOMMISSION.....1st RESPONDENT

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

THE ATTORNEY GENERAL.....3rd RESPONDENT

RULING

05/11/2020 & 30/11/2020

Masoud, J.

The applicant was an employee of the Tanzania Police Force from 28/04/2003 when she was employed as a Police Constable to 6/07/2019 when she was terminated from the service by the first respondent at the rank of Inspector of Police stationed at Kinondoni Dar es Salaam. The letter of termination which was given to her was dated 06/07/2019 referenced Kumb. Na. USPC 18357/7. Her termination was a result of a charge consisting of two offences levelled against her before a military tribunal whose proceedings ended on 30/07/2018.

The record of proceedings leading to her termination by the first respondent was sent to the Inspector General of Police (IGP) to impose a punishment. The IGP proposed to the second respondent that the applicant's rank be reduced from Inspector of Police to Assistant Inspector of Police. The proposal was evidenced in a letter addressed to the second respondent dated 21/11/2018 referenced Kumb Na. PHQ/PF.18357/A/13 annexed to the applicant's affidavit. The applicant's complaint is that while the proposed punishment was in accordance with the law made to the second respondent, the first respondent contrary to the requirements of the law and without jurisdiction, terminated the applicant's employment vide the letter dated 6/7/2019 mentioned herein above.

As she was aggrieved by the purported decision of the first respondent, the applicant challenged the decision by way of an appeal duly lodged to the first respondent. A copy of the said appeal dated 9/8/2019 and entitled "*Rufaa ya Adhabu ya Kuachishwa Kazi*" was annexed to the applicant's affidavit to fortify the respective averment. The appeal was grounded on, firstly, a complaint that the first respondent had no jurisdiction to impose the punishment as it was an appellate body; secondly, the military tribunal misdirected itself in analysing the charge

and the evidence and not finding that the evidence was in conflict with the charge; and thirdly, the punishment imposed was excessive.

The first respondent responded by a letter dated 14/04/2020 referenced Kumb. Na. USPC 18357/15 annexed to the applicant's affidavit, saying that the first respondent could not entertain the applicant's appeal against the termination of her employment because the decision to terminate her was reached by the same organ in respect of which the appeal was preferred. The said letter advised the applicant to prefer her grievances to other forums in accordance with the law. It was made clear that the response by the first respondent followed the applicant's complaint to the Minister responsible with home affairs about the delayed determination of her appeal. This was evidenced by the applicant's written letter of complaint to the Minister dated 25/03/2020 which clearly preceded the first respondent's response.

As the applicant was once again aggrieved by the decision of the first appellant refusing to entertain her appeal against the decision of the military tribunal which found her guilty of the charge levelled against him and hence forwarded the finding to the IGP for imposition of punishment, she brought the present application on 17/08/2020 for

prerogative orders against the said decisions after obtaining leave of this court on 6/08/2020. The prayers in the chamber summons were couched in the following terms and I hereby quote:

> *(a)An order for certiorari quashing the following:*
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> *(i) whole proceedings, judgment, findings dated 30/07/2018, for being tainted with serious illegalities, both of procedure and decision, for being very unreasonable that no reasonable authority could have reached to that decision; for lack of reason by both not taking into account matters which ought to have been taken into account and not taking into account matters which ought to have taken into account (sick).*
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> *(ii) Letters dated 6/7/2019 and 14/4/2020 by the first respondent as while the former is a decision reached by the first respondent terminating the applicant from her employment without any jurisdiction to exercise such powers, the letter is upholding the former.*

(b) An order for mandamus compelling the 2nd respondent to reinstate the Applicant as the decision for her dismissal from employment was in total violation of the principles of natural justice, lack of jurisdiction by the first respondent.

(c) Costs of the application.

(d) Any other relief which the Honourable court shall deem fit to grant in favour of the applicant.

As is required by the law, the application was supported by the applicant's affidavit and statement of facts which stated the facts set out herein above forming the context of the application. The statement of facts among other things stated the grounds and facts upon which the application was made. They were, firstly, lack or access of jurisdiction; secondly, violation of principles of natural justice; thirdly, the decision arrived at was so unreasonable that no reasonable authority could ever arrive into it; and fourthly, illegality of procedure and decision.

The affidavit recounted factual evidence supporting the grounds of complaint as set out in the preceding paragraphs of this ruling. It is, perhaps, worthwhile to add that in support of the grounds of complaint,

it was the applicant's averment that the members of the military tribunal played triple roles as judges, complainants, and prosecutors in the proceedings. The said members cross-examined the applicant and the tribunal was not impartial.

Further, that there was a documentary evidence (i.e a letter referenced DSMZ/B.1/21/246 dated 20/11/2010) which was used against the applicant although the applicant was not given chance to examine it and object the document. There was also allegation of lack of analysis of the evidence and thus absence of reasons for the decision. It was furthermore averred that the tribunal entertained other matters, which informed the decision, although the same were not part of the evidence adduced by the parties.

The respondents opposed the application. They filed a statement in reply and a joint counter-affidavit respectively signed and sworn by Mr Geofrey Mlagala, a principal officer of the second respondent. The counter-affidavit countered all allegations in relation to the decisions that the applicant was challenging saying that the decision to terminate the applicant was proper as the applicant was guilty of misconduct and insubordination. The only facts which were not denied were; the fact

that the applicant was an employee of the Police Force, when her employment was terminated on 6/7/2019; the letter dated 14/4/2020 sent to the applicant notifying her that the first respondent could not entertain the appeal.

At the hearing of the application, Mr T. Kavishe, learned Counsel, represented the applicant, while the respondents were represented by Ms Gati Mseti, learned State Attorney from the Solicitor-General Office. By and large, the rival submissions were at per with the facts which formed the context of the application as summarized herein above. The authoritative decision of the Court of Appeal of Tanzania in **Sanai Murumbe vs Mhere Chacha** [1990] TLR 54 was employed by the counsel for the applicant to support his arguments. The decision laid down guiding principles upon which an order of certiorari can issue against a decision of a subordinate court, or a tribunal or a public authority.

The guiding principles in relation to a subordinate court, or a tribunal or a public authority which were enunciated in **Sanai Murumbe's case** are, one, taking into account matters which it ought not to have taken into account; two, not taking into account matters which it ought to have

taken into account; three, lack or excess of jurisdiction; four, conclusion arrived at is so unreasonable that no reasonable authority could ever come to it; five, rules of natural justice have been violated; and six, illegality of procedure or decision.

In showing how the first respondent was in excess of jurisdiction, the court was referred to regulations 28 upto 41 of the Police Force, Immigration and Prisons Service Commission Regulations, GN No. 38 of 2015. It was shown with reference to the copy of the proceedings of the Military tribunal (at page 22) that the tribunal concluded the matter by finding the applicant guilty of both offences of which she was charged with and recommended the matter to the IGP for imposition of punishment as is required by the law. The relevant part of the recommendation reads thus:

> *'Maoni ya Mahakama ya Kijeshi ni kwamba hatua za kinidhamu/adhabu itolewe na afande Inspector General wa Police atakavyoona inafaa.'*

It was submitted and shown that the IGP acted in accordance with the law by writing to the Permanent Secretary (2nd respondent) advising the applicant's rank be reduced to Assistant Inspector from inspector of

police. Contrary to the requirement of the law, the advice given to the IGP and in excess of jurisdiction, it was submitted that the first respondent (an appellate organ of decisions of the second respondent) wrote to the applicant a letter dated 6/7/2019 notifying the applicant of its meeting which went through the proceedings of the military tribunal and decided to terminate the applicant's employment. The letter in part reads thus:

> *'Ninakuarifu kuwa kikao Na. 04/2018/2019 cha Tume ya Utumishi ya Polisi, Uhamiaji na Magereza kilichofanyika tarehe 01 Julai 2019 kilipitia Mwenendo wa Mashtaka ya Kijeshi dhidi yako na kuthibitisha pasipo shaka kuwa ulitenda makosa yote mawili kinyume na kanuni C. 5 (XLVI) na Kanuni C.5 (XIV) ya Kanuni za Utumishi za Jeshi la Polisi za mwaka 1995 kama zilivyorekebishwa mwaka 2013.*
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> *Hivyo, kwa mamlaka niliyonayo kwa mujibu wa Kifungu cha 8(1) cha Sheria Na. 8 ya Tume ya Utumishi ya Polisi, Uhamiaji na Magereza ya Mwaka 1990, kama ilivyorekebishwa na Sheria Na. 8 ya Uhamiaji yam waka 2015, Tume kupitia kikao hicho iliridhia uachishwe kazi kuanzia tarehe 01 Julai, 2019 na unastahili kulipwa stahiki zako zote.'*

To show that the first respondent was an appellate organ, the court was referred to regulation 41(1) of the above mentioned Regulations which show that an officer above the rank of Assistant Inspector upto Assistant Inspector, if aggrieved by penalty imposed or confirmed by the Inspector General or the Permanent Secretary as the case may be may within seven days of notification to him appeal to the Commission (the first respondent). Resting his submissions on this point, the counsel invited the court to grant the prayers set out in the chamber summons on this ground of excess of jurisdiction.

As to the failure of observing rules of natural justice, it was submitted that the members of the tribunal cross-examined the applicant and thereby serving as both adjudicators and prosecutors contrary to the requirement of the law. In addition, and to make things worse, the military tribunal proceedings involved a document which the applicant was never given room to object or otherwise, which is contrary to regulation 30(4) of the above mentioned Regulations. Attention of the court was drawn to regulation 31(1) of the said Regulations which prohibit using a documentary evidence unless the same was availed to the accused officer. The document was referred to as a letter Ref No.

DSMZ/BI/21/246 dated 20/11/2010. It was contended that the letter only sufficed at the conclusion of the matter although it was never party of the entire proceedings. The applicant was thus denied a fair hearing which vitiate the entire proceedings. Failure to give reasons for the decision to terminate the applicant was also advanced as a ground and submission in that respect was made. The same was also made in relation to lack of reasons in support of the recommendation for reducing the applicant's rank.

The replying submissions by the respondent insisted that the proceedings leading to the applicant's termination were proper and lawfully conducted. The commission was empowered to terminate the applicant and the termination was therefore valid. Reliance was made on regulation 6 of the above mentioned Regulations, and sections 3(3) and 8 of the Police Force and Prisons Service Commission Act, 1990.

The court was further told in reply that the second respondent was a delegate of the first respondent whose powers do not include imposing dismissal or termination which had to be imposed by the first respondent. In addition, the second respondent is also a member of the first respondent serving as a secretary. The allegation of violation of

natural justice was contested by argument that the applicant was accorded right to be heard, the tribunal was impartial and properly constituted, the alleged letter was six years old and not relevant to the matter and did not form part of the decision reached.

It is worthwhile to mention albeit in passing that reliance was made on **Pavisa Enterprises vs the Minister for Labour Youths Development & Sports and Another**, Misc. Civil Cause No. 65 of 2003; and **Ezekia T. Oluoch vs Permanent Secretary, President Office Public Office Management**, Civil Appeal No. 140 of 2018 by the learned State Attorney for the respondents to buttress her arguments against the merits of the application. I should equally point out that I had due regards to the above cases which were all on judicial review.

In rejoinder submissions, the counsel for the applicant essentially reiterated his submissions in chief.

While I was considering the rival submissions, it became clear to me that the regulations which were invoked by the applicant without being disputed in any way by the learned State Attorney for the respondents

were the Police Force, Immigration and Prisons Service Commission Regulations, GN No. 38 of 2015. However, my scrutiny and the subsequent inquiry led me to the Police Force Service Regulations, 1995, which was referred in the letter informing the applicant about her termination, and which seems, in my considered opinion, to be more or less similar to the Police Force, Immigration and Prisons Service Commission Regulations (supra) in many respects.

In light of the above similarities, I would say that the same are particularly so with regard to the disciplinary procedures applicable to officers of the rank between assistant inspector upto assistant commissioner. I was convinced that the former Regulations were relevant and applicable to the present matter. In so far as the rival submissions were concerned, I was quick to land my eyes on Part IV of the Police Force Service Regulations, 1995 entitled "Discipline". This part provides an elaborate procedure on handling disciplinary proceedings involving a police officer.

It was apparent from the above mentioned Regulations that the accused officer is required to be given reasonable access to documents necessary for preparation of his defence. Consistent with this right, the tribunal is

also required to give opportunity to the accused officer to put questions on his own behalf to witnesses. And of particular relevance to this matter, it is the requirement under such Regulations that no documentary evidence should be used against the accused officer unless the said accused officer had previously been supplied with a copy of the document or access thereof. This requirement is stipulated under C.6(6) of the Police Service Regulations. It is, indeed, a replica of a similar requirement found under the Police Force, Immigration and Prisons Service Commission Regulations (supra), which was heavily relied on by the applicant's counsel.

I made a thorough examination of the proceedings conducted against the applicant by the military tribunal. I relied on a copy of the proceedings which was annexed to the applicant's affidavit, and which copy was not specifically disputed by the respondents. I was satisfied that there was indeed a letter Ref. No. DSMZ/BI/21/246 dated 20/11/2010 which was used by the tribunal in arriving at its decision although the letter was not part of the entire proceedings.

My scrutiny of the said copy of the proceedings did not see at all anything like an exhibit in the nature of the said letter which was

tendered by the prosecution in the course of the proceedings and admitted by the military tribunal. Neither did I see anything like a record to the effect that the applicant was previously given access to the document, nor a copy thereof prior to the commencement of the proceedings, nor in the course of the proceedings. On my part, the absence of such record means that the applicant was not given opportunity to examine the document, object the document or prepare her defence whilst mindful of the said document.

My finding in this respect is that the said letter was improperly used and relied on by the military tribunal in arriving at its decision. And in so doing, the applicant was agreeably prejudiced as she was denied room to prepare for her defence in relation to the said letter, right to cross-examine on the letter, and the right to object its admission in evidence.

To see how the letter was used in arriving at the decision against the applicant, the relevant part of the proceedings tells it all. The letter was at the heart of the framed issues (page 21 of the typed proceedings), and it heavily influenced the reasoning (at page 22 of the proceedings) for the decision which found the applicant guilty of the two offences. The argument, by the learned State Attorney, that the letter was an old one

as it is dated in 2010 which is before the applicant was charged with the two offences, and was therefore not relevant to the matter is misplaced. And if there is anything worth mentioning is that, the argument by the learned State Attorney serves to demonstrate the extent to which the applicant was prejudiced by the use of the letter by the military tribunal against the applicant. I am settled that this anomaly in itself suffices to dispose of the matter in favour of the respondent. Nonetheless, I find it prudent to look at the other ground which is equally sufficient in itself to dispose of the matter in favour of the applicant.

As to the complaint of access of jurisdiction in which the first respondent imposed a punishment of termination, I looked at the procedure and was satisfied that the first respondent was in access of jurisdiction when it purportedly hijacked the disciplinary proceedings and powers vested in the Inspector General of Police in dealing with the record of inquiry with its finding and recommendation, confirmed the finding of the military tribunal, proceeded to terminate the applicant, and denied the applicant opportunity to have her appeal against the decision of the military tribunal heard and determined by it, and advised the applicant to seek for her justice in other forums.

The excess of jurisdiction, in my humble opinion, was a result of material violation of the procedure which is apparent and self-explanatory under regulation C.6 of the Police Force Service Regulation, 1995. As indicated above, a thorough reading of the said procedure tells it all loud and clear. I need not reproduce the procedure and expound on it in any further detail.

Having so found as herein above, I must consider the issue whether the applicant has made out a case for the order of certiorari to issue for the impugned decisions to be removed into this court for the purpose of being quashed. The crux of this application was on the grounds of violation of rules of natural justice, excess of jurisdiction, and failure by the first respondent to provide reasons for confirming the impugned decision.

I am in the circumstances prepared to answer the above issue in the affirmative on the grounds of violation of rules of natural justice and excess of jurisdiction as already extensively pointed out above. As there was also a clear violation of relevant regulations, I would also be prepared to find that there was a clear violation of procedure set out under the relevant Regulations (supra). The application is therefore

meritorious for reasons stated. There is accordingly a sound basis for granting the other prayer for an order of mandamus.

In the final results, the applicant has made out her case. I would, accordingly, grant the prayer for an order of certiorari to quash the impugned decisions affecting the applicant, including the subsequent confirmation by the first respondent of the military tribunal proceedings and the decision terminating the applicant employment. Henceforth, the said decisions are all quashed. Consequently, an order of mandamus is issued. The applicant will have the costs of the application.

I order accordingly.

Dated at Dar es Salaam this 30th day of November, 2020

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B. S. Masoud

Judge

Court

Ruling delivered in the presence of Ms Gati Mseti, State Attorney for the respondents, and Mr Mwangénza Mapembe, Advocate for the Applicant, this 30/11/2020. Right of Appeal explained.

B. S. Masoud
Judge