

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

MISCELLANEOUS CAUSE NO. 50 OF 2020

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY
FOR ORDERS OF MANDAMUS AND CERTIORARI**

AND

**IN THE MATTER OF THE DECISION OF THE COMMISSIONER GENERAL
OF IMMIGRATION SERVICES OF THE 24TH DAY OF AUGUST, 2020**

BETWEEN

ISAYA JOSEPH CHAWINGA APPLICANT

AND

- 1. COMMISSIONER GENERAL OF
IMMIGRATION SERVICES 1ST RESPONDENT**
- 2. HON. ATTORNEY GENERAL 2ND RESPONDENT**

Date of Last Order: 11/12/2020

Date of Ruling: 09/02/2021

RULING

FELESHI, J.K.:

This ruling refers to an application made before this Court pursuant to the provisions of sections 17, 18(1) and 19 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap. 310 R.E. 2019] and Rules 5 and 6 of the Law Reform (Fatal Accidents and Miscellaneous

Provisions) (Judicial Review Procedure and Fees) Rules, 2014 for orders to the effect that:

- a. The Court be pleased and grant leave to the applicant so that he may apply for orders of *certiorari* and *mandamus*.
- b. Any other reliefs that this Court may be pleased and deems fit to grant.

In his supporting affidavit, the applicant deposed that, on 29th June, 2007, he was employed by the 1st respondent on permanent terms the employment which was confirmed into public service on 6th November, 2008. That, on 18th October, 2018, the 1st respondent served him with a termination letter to the applicant whereas before such termination, he was not issued with any charge or notice. He thus contests the legality of the said termination.

In response, Mr. Salum Othman Salum, an officer for the 1st respondent disputed that on 18th October, 2018, the 1st respondent issued termination letter to the applicant, adding that, the regulations (sic) were legal, reasonable and clear and that they were made within statutory

requirements. Besides, Mr Salum added, the applicant did not as such prefer any appeal.

Hearing of the application was scheduled to be by way of written submissions whereas parties complied with. To argue for the merits of the application, the applicant engaged services of Claritate Legal Consultants and BF & B Co. Advocates while the respondents had services of Rehema Mtulya, learned State Attorney of the Office of the Solicitor General.

Arguing for the application, the applicant's counsel submitted that, on 17th July, 2020, the 1st respondent issued to the applicant a dismissal letter arguing that such dismissal comprised of irregularities and was both irrational and unreasonable for no charge or proceedings with regard to the disciplinary claims dated 18th day of October, 2018 in dismissing the applicant from public service was ever communicated to the applicant.

The applicant's counsel argued that, neither charges nor proceedings have been annexed to the Counter Affidavit. Besides, the document in dismissing the applicant contravened regulations 10 and 27(2) of the Police Force, Immigration and Prison Service Commission (Immigration Service) (Administration) Regulations, 2015 G.N. No. 438 for powers of the

Commissioner General of Immigration Services are confined to determination of appeals when junior officers are punished by senior officers thus arguing the Commissioner General to have had acted *ultra vires*.

In reply, the learned State Attorney submitted that, since the applicant has asserted in his affidavit that he was served with termination letter on 18th October, 2018, with the present application for leave filed on 6th October, 2020, the same is time barred for being filed beyond the prescribed six months period of time. Besides, she added, the applicant condoned his right to be heard having failed to file his statement of defence in accordance with rule 50(1) of the Immigration Service (Administration) Regulation, 2018 thus leading the inquiry to be held *ex parte* in terms of rule 50(2) of the Immigration Service (Administration) Regulation (*supra*).

The learned State Attorney added that, the applicant was served with the respective charge. Besides, the application was conducted *ex parte* by an Inquiry Committee with the findings confirmed by the

Commissioner General whereas the applicant did not appeal as provided for by the law thus urging for the application to be dismissed with costs.

In rejoinder, the applicant's counsel submitted that, the applicant was terminated under the Police Force, Immigration and Prison Service Commission (Immigration Service) (Administration) Regulations, 2015 G.N. No. 438 instead of G.N. No. 438 of 2018. Also, there is no evidence of service and that the termination was by the Regional Immigration Officer–Kilimanjaro addressed to the Regional Immigration Officer–Kagera region.

Regarding the raised time limitation, the applicant's learned counsel submitted to the effect that, the said letter of termination against the applicant was received by the applicant on 17th July, 2020 thus arguing the application at hand for leave to file an application for prerogative orders to have been filed within the prescribed time limitation. The applicant's counsel thus reiterated his earlier prayer for grant of the sought reliefs.

Having gone through the Court record and the submissions by the respective learned friends, the following are the deliberations of this Court with regard to the reliefs sought. Starting with the issue of time limitation, it is clear on record from the applicant's affidavit that the applicant was

terminated on 18th October, 2018 with the present application filed on 6th October, 2020, that is, almost after lapse of two years. But the applicant's counsel has argued that the applicant was not served with the termination letter just to be served on 17th July, 2020.

Strictly, time limitation is a point of law that outsmarts any attempt in pursuing any legal remedy in law as that can be raised and determined by way of a Preliminary Objection. Notably, there are situations where issues of time limitation can require some facts. For instance, in **Olais Loth (Suing as administrator of the estate of the late Loth Kalama) vs. Moshono Village Council**, Civil Appeal No. 95 of 2012, (Arusha Registry), (Unreported), the Court of Appeal had the following in observance:

"... it appears to us that the question of when the 12-year limitation period began to run against the late LOTH KALAMA and his estate which includes the disputed land, still requires further proof and cannot be determined at the preliminary stage as pure point of law. This leaves open to proof the allegation of facts contained in the third paragraph of the **Plaint".**

The above stands the position in the present application where the issue of time limitation requires some facts in proof that the present application is within the prescribed time limit or rather, beyond, hence,

time barred. Notably, such aspect/scenario worth to be determined even in the main application upon grant of leave by this Court. It is through that forum that the mixed-up issues of facts and law regarding service of the termination will be ascertained and finally determined by the Court. From the above, the issue of time limitation is struck out for want of evidence.

Resorting into the very application for leave, the applicant has argued that he was not as such accorded fair opportunity to be heard. In buttress, the learned State Attorney has argued that the applicant was accorded fair opportunity to be heard but, instead, he condoned the accorded right thus necessitating a formed mandated probe Inquiry Committee to conduct an *ex parte* inquiry with its findings as to termination finally confirmed by the Commissioner General of the Immigration Services.

The applicant has argued that there were irregularities even as to the instrument that terminated him from employment with the learned State Attorney maintaining that all were within the requirements of the law.

To this Court and as rightly submitted by the applicant's counsel, whether the termination was proper or not covering both the invoked procedures and the very document in terminating the applicant, the same

merits determination in the main application for prerogative orders, not at this leave stage as the respondent has extended further in articulation.

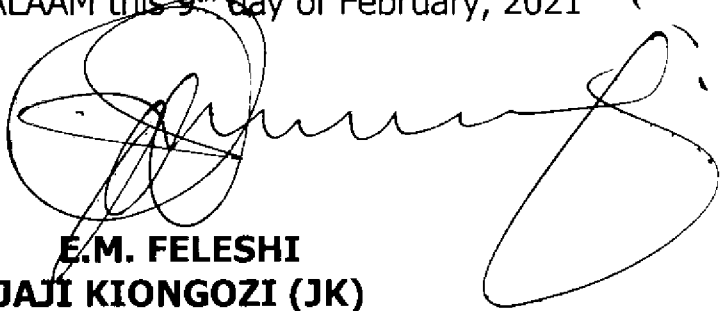
The duty of this Court at this leave stage is to ascertain whether the following elements amongst exist, that is, **one**, that there is an arguable case and **two**, whether the applicant has established sufficient interest to be allowed to bring the main application per the Court of Appeal in **Emma Bayo v. the Minister for Labour and Youths Development and 2 Others**, Civil Appeal No. 79/2012, (Arusha Registry), (Unreported).

From the above unison, this Court finds merit in the present application. Consequently, leave to apply for prerogative orders is hereby granted. Considering the circumstances of the application and this matter being on employment, parties are ordered to bear their own costs.

It is so ordered.

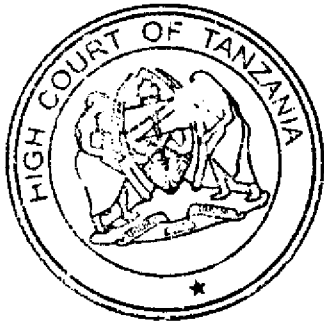
DATED at DAR ES SALAAM this 9th day of February, 2021




E.M. FELESHI
JAJI KIONGOZI (JK)
09/02/2021

COURT:

Ruling delivered this 9th day of February, 2021 in presence of Ms Rehema Mtulya, learned State Attorney for the Respondents but, in the absence of the Applicant.



E.M. FELESHI
JAJI KIONGOZI (JK)
09/02/2021