

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. CIVIL CAUSE NO. 27 OF 2020

*IN THE MATTER OF APPLICATION BY DEOGRATIAS NALWAMBWA
MAGOMBA FOR LEAVE TO APPLY FOR ORDERS OF CETIORARY AND
MANDAMUS*

*IN THE MATTER OF THE DECISION OF THE KAHAMA TOWN COUNCIL,
PUBLIC SERVICE COMMISSION AND CHIEF SECRETARY TO ILLEGALLY
TERMINATE THE APPLICANT EMPLOYMENT BASING ON OFFENCE NOT
CHARGED WITH AND HENCE DENIAL OF A RIGHT TO BE HEARD.*

DEOGRATIAS NALWAMBWA MAGOMBA.....APPLICANT

VERSUS

KAHAMA TOWN COUNCIL.....1ST RESPONDENT

PUBLIC SERVICE COMMISSION.....2ND RESPONDENT

CHIEF SECRETATY.....3RD RESPONDENT

THE ATTORNEY GENERAL.....4TH RESPONDENT

RULING

Date of Last order: 23/2/2021

Date of Ruling: 26/2/2021

MKWIZU, J.

This is ana application by **DEOGRATIOUS NALWAMBWA MAGOMBA** for leave to file an application for *certiorari* and *mandamus* against decisions by **The CHIEF SECRETARY** (3rd Respondent) dated 25th October, 2017 and 21st December, 2018. The application is made under section 17 (2) of the

Law Reform (Fatal Accidents and Miscellaneous Provisions) Act Cap 310, R.E 2002, Rule 5(1) (2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, GN No. 314 of 2014 and section 2 (1) of the Judicature and Application of Laws Act, (Cap, 358 R.E 2002) and any other relevant Provisions of the Law. It is supported by an affidavit sworn by the applicant on 29th July, 2020.

The respondents filed a joint counter affidavit and the reply statements taken by Mr. Solomon Lwenge, learned Senior State Attorney.

The dispute between the parties arose after the allegedly an illegal termination of the applicant's employment with the 1st respondent, KAHAMA TOWN COUNCIL. According to paragraph 4 of the affidavit, applicant was charged with and defended for the offence of lying to his employer and obtained an imprest to the tune of 15,000,000/= for refurbishing the Kadeco building including buying windows and doors knowing that the said windows and doors were already in place. To the contrary, he was convicted of lying to the employer for contravening the provisions of the Local Government Financial Memorandum of 2010 (Memoranda ya fedha za Serikali ya Mtaa ya Mwaka 2010) and for recording the items brought in the store without the

report from the inspection team. He unsuccessfully appealed to the 2nd and 3rd respondent. Applicant was late to take appropriate steps in this application, He however successfully applied for extension of time before this court which was granted on 10th July, 2020 hence this application in which two reliefs were sought that:

- 1. The Hon. Court be pleased to grant leave to the Applicant to seek an order of certiorari and mandamus to quash the order of termination of employment of the Applicant given by 3^d Respondent dated 25/10/2017 for being illegal, as it affirmed the decisions of the 1st and 2nd respondents which were illegal and a nullity.*
- 2. The Hon. Court be pleased to grant leave to the Applicant to seek an order of certiorari and mandamus to quash the order of termination of employment of the Applicant given by 3^d Respondent dated 21/12/2018 for being illegal, as it affirmed the decisions of the 1st and 2nd respondents which were illegal and a nullity.*

At the hearing, Mr. Elias R. Hezron learned counsel appeared for the applicant while the respondents were represented by Mr. Solomon Lwenge learned Senior State Attorney. Submitting for the application Mr. Hezron first adopted the affidavit to form part of his submissions. He in addition argued

that for the court to grant this application, applicant must demonstrate an arguable case. Explaining the said arguable issues, Mr. Hezron submitted that Applicant was denied the right to be heard and that he was convicted of the offence which he was never charged with. He therefore on those grounds prayed that the application be allowed with no order as to costs.

On his part, Mr. Solomon Lwenge for the respondent supported the application. He said, applicant had shown an arguable case and therefore the application should be granted. His submissions was basically a replication of his reply statement in which he categorically expressed his agreement with the applicant's application.

As correctly stated by Mr. Hezron, counsel for the applicant, this being an application for leave to file application for judicial review, the court's duty is limited on looking into whether the applicant has demonstrated an arguable case. This position was stated in the case of **Emma Bayo vs the Minister for Labour and Youth Development and Others** Civil Appeal No. 77 of 2012, CAT Arusha (unreported) where the court observed that:

"...the stage of leave serves several important screening purposes. It is at the stage of leave where the High Court satisfies itself that the applicant for leave has made out any arguable case to justify the filing of the main application. At the stage of leave the High Court is also required to consider whether the applicant is within the six months

limitation period within which to seek a judicial review of the decision of a tribunal subordinate to the High Court. At the leave stage is where the applicant shows that he or she has sufficient interest to be allowed to bring the main application. These are the preliminary matters which the High Court sitting to determine the appellant's application for leave should have considered while exercising its judicial discretion to either grant or not to grant leave to the applicant/appellant herein."

I have gone through the affidavit in support of the application, the parties statements and the oral submissions made before the court during hearing of the application. Indeed, there are issues to be tested by this court in a proper application for certiorari and mandamus. The facts as provided in the applicant's affidavit and supported by the Learned State Attorney for the respondent discloses a failure by the 1st respondent to make a decision on the charge table against the applicant, instead, the decision was made on a distinct accusation which was never tabled against the applicant hence condemning him without an opportunity to be heard.

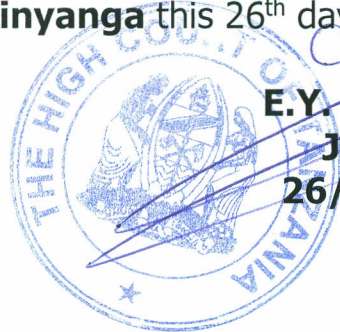
There is no doubts that applicant has sufficient interest to be allowed to bring the main application. It is undisputed fact that he was an employee of

the 1st respondent, and that his employment was terminated under the above explained circumstances.

The above explained, I find the application tenable. The applicant's application for leave to file application for judicial review is granted. The said application should be filed within 14 days from the date of this order under rule 8 (1) (b) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial review Procedure and Fees) Rules, 2014.

Each party to bear its own costs. It is so ordered.

DATED at Shinyanga this 26th day of February 2021.



E.Y. MKWIZU
JUDGE
26/2/2021