

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

MISCELLANEOUS CAUSE NO. 3 OF 2021

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

**IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND
MISCELLANEOUS PROVISIONS) ACT (CAP. 310)**

**IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND
MISCELLANEOUS PROVISIONS) (JUDICIAL REVIEW PROCEDURE
AND FEES) RULES, 2014 (G.N NO.324)**

AND

**IN THE MATTER OF GOODLUCK MANDES WHO IS APPLYING FOR AN
APPLICATION FOR A LEAVE TO FILE APPLICATION FOR JUDICIAL REVIEW
BETWEEN**

GOODLUCK MANDES APPLICANT

AND

THE UNIVERSITY OF DODOMA 1ST RESPONDENT

**THE CHAIRMAN OF SENATE OF THE
UNIVERSITY OF DODOMA 2ND RESPONDENT**

**THE DEPUTY VICE CHANCELLOR ACADEMIC,
RESEARCH AND CONSULTANCY 3RD RESPONDENT**

**THE PRINCIPAL OF COLLEGE OF EARTH
SCIENCES AND ENGINEERING, THE UNIVERSITY
OF DODOMA 4TH RESPONDENT**

THE HON. ATTORNEY GENERAL 5TH RESPONDENT

Date of Last Order: 06/04/2021

Date of Ruling: 08/04/2021

RULING

FELESHI, J.K.:

This ruling seeks to address the applicant's prayers for leave to file an application for prerogative orders of *certiorari* and *mandamus*; costs;

and, any other relief (s) the court may deem fit and just to grant against above-mentioned respondents.

The application is preferred under Rules 5 (1), (2)(a), (b), (c) and (d), (3), (4), (5), (6), 6 and 7(1), (2), (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 ("the Rules") and sections 17, 18(1) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap. 310 R.E. 2019] ("the Act") and is supported by the applicant's affidavit. Paragraphs 4,5,6,7,11 and 12 of the said affidavit provides: -

"4. That, my University examination results for the 2019/2020 Academic year which was my second year were released with errors and I am so much dissatisfied with such examination results.

5. That I pursued my right to appeal against the University examination results before the Senate of the University of Dodoma.

6. That, I have received an official letter from University Senate dated 6th January, 2021 with ref. T/UDOM/2018/06629 informing me that on 12th December, 2020 the University Senate disapproved my request for appeal against the University examination results for the 2019/2020 Academic year without being supplied to me reasons for the decision which was based. I have been denied the right to know reasons for the decision contrary to the rules of natural justice, in particular, the right to reasoning.

7. That, I am very much dissatisfied with the Respondents' decision so reached on 12th December, 2020 to deny me arbitrarily my right to access to university education and training. Copy of the letter from University Senate is hereby annexed and marked as annexure A1 of this affidavit...

11. That, I have made reasonable efforts to have an opportunity for continuing with my studies at the University of Dodoma College of Health (sic) Sciences and Engineering, but my efforts have disapproved by the University Senate without good cause being known.

12. That, unless there is an order of this Court granting The Applicant a leave to file judicial review for orders of certiorari and mandamus, the Applicant stands to suffer irreparable loss for denial of an opportunity to have the right to education and training and missing available educational loans for him as the student of the University."

On their part, the respondents through the counter affidavit deposed by one Dr. Ryoba Marwa, the Secretary to the Council in the office of the 1st Respondent, noted in paragraph 3 the contents of Paragraph 5 of the Applicant's affidavit quoted above and strongly rebutted the contents of other paragraphs. In paragraph 5, Dr. Marwa specifically and strongly denied the applicant's averment in paragraph 4

that the Applicant's results for academic year 2019/2020 were released with errors. Paragraph 8 of the said counter affidavit provides: -

"8. That the contents of paragraph 11 and 12 are strongly denied in that the Applicant was discontinued from the study on academic merits after he failed six (6) courses for the same academic year meaning Semester I and II which resulted him to fail to attain the required minimum required Grade Point Average (GPA) of 1.8. (A copy of the applicant's results for academic year 2019/2020 is hereto annexed marked 'UDOM 2' and leave of this court is craved to refer to it as part of this affidavit."

During hearing, Mr. Gidion Kaino Mandesi, learned advocate, strongly submitted for the Applicant that the application is compliant to Rule 4 of the Rules because the Applicant has been affected by the decision of the 2nd Respondent made on 12th December, 2020 which disapproved his request for appeal against University Examination Results for 2019/2020 Academic Year without giving reasons, the act which resulted into his being discontinued from studies by the 1st Respondent hence, offending the rules of natural justice.

He argued that the leave sought will pave way for the parties to be heard inter- parties where the applicant will challenge the illegality of procedure taken in the complained of decision. To that effect, Mr Mandesi

referred the court to its decision in the case of **Bageni Okeya Elijah and 3 others Versus the Judicial Service Commission and 2 others**, Miscellaneous Civil Cause No.15 of 2018, High Court of Tanzania Main Registry at Dar es salaam, (Unreported).

Mr. Mandesi also faulted the competence of the respondents' counter affidavit on the ground that it was deposed by unauthorized person (Dr. Ryoba Chacha), a person who did not present any written resolution or an official letter or authorization from either the 1st Respondent or the 2nd Respondent mandating him to act for and on their behalf. He thus implored the court to expunge Dr. Chacha's affidavit.

Finally, it was Mr Mandesi recapitulation that in view of the decisions of this Court in **Said Juma Muslim Shekimweri v. Attorney-General** [1997] TLR 3, **James F Gwagilo v. Attorney General** [1994] TLR 73 and **Mohamed Jawad Mrouch v. Minister for Home Affairs** [1996] TLR 142, the 2nd Respondent was legally bound to give reasons for his complained of decision. As he did not do so, he implored the court to grant the application and its prayers in the chamber summons.

In reply, Mr. Daniel Nyakiha, learned State Attorney in the Office of the Solicitor General adopted the Respondents' counter affidavit deposed by Dr. Ryoba Marwa and submitted for the respondents that, it is a

common ground that for one to institute the judicial review application must have strong grounds and must meet the standard of triable issues which, at least must meet the minimum criteria including: illegality; procedural impropriety and irregularity; irrationality; and proportionality.

He further submitted that the applicant ought to know that the duty to give reason arise when the basis for the decision is unknown to the person against whom the decision is made arguing that, it will be odd indeed in the instant application for the court to accept that a person who failed the course work be allowed and awarded "C". He added, by the court allowing this application would be committing academic suicide in the country because there are many students who, like the applicant, think studying serious is not necessary.

Mr Nyakiha referred the Court to decisions of the Court of Appeal in **Ally Linus and 11 others v. THA and another** [1998] TLR CAT 5 and **Sanai Murumbe and Another v Muhere Chacha** [1990] TLR 54 which, laid down the factors warranting issuance of the writ of *certiorari* to wit- absence or lack of Jurisdiction; errors of law on the face of record; breach of principles of natural Justice; fraud, collusion or perjury; existence of matters which ought not to have been taken into account; omission of matters which ought to have been taken into account; and

existence of unreasonable conclusion that no reasonable authority could ever come to it.

He further cited the decision of this court in the case of **John Mwombeki Byombalirwa v. The Regional Commissioner and Regional Police Commander, Bukoba** [1986] TLR 73 on five conditions which must be proved in order for an order of *mandamus* to issue to wit- (a) the applicant must have demanded performance and the respondents must have refused to perform; (b) the respondents as public officers must have a public duty to perform imposed on them by statute or any other law but it should not be a duty owed solely to the state but should be a duty owed as well to the individual citizen; (c) the public duty imposed should be of an imperative nature and not a discretionary one; (d) the applicant must have a *locus standi*, that is he must have sufficient interest in the matter he is applying for; and (e) there should be no other appropriate remedy available to the applicant.

In his in-depth further submission Mr. Nyakiha substantiated the above factors against the applicant's university admission and his academic performance within the spectrum of the University Regulations for Undergraduate Programmes of 2019 as revised on 20/4/2020 and finally implored the court to dismiss the application due to the applicant's total failure to meet the required level of triable issues.

In rejoinder, the applicant's counsel reiterated that the application before the court merits issuance of the leave sought more so as the respondents' reply submission did not object that the applicant complied with Rule 5 of the Rules. He added that, as the learned State Attorney completely failed to produce any documentary evidence to corroborate with explanations regarding Dr. Ryoba Marwa's counter affidavit for the Respondents, the same should be expunged. Mr. Mandesi finally asked the court to grant the application as per the chamber summons.

After going 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.

One thing I have to point out at this juncture is that, I did not exercise my mind or even provide the gist of some paragraphs from both the Applicant's affidavit and the Respondents' counter affidavit and their attendant submissions because they introduced materials which are obviously irrelevant at this stage. To me, facts on whether the applicant had passed or failed the examination are good stuff before another forum conducting inquiry proceedings on those aspects. I likewise did not consider some of the cases referred to me above for my guidance.

The guidance by Lord Diplock from the case of **R.v.T R.C, Exp National Federation of Self Employed and small business Ltd** [1982] A.C 617 that was correctly brought to my attention by Mr. Nyakiha that, leave is designed to filter out applications which are groundless or hopeless at early stage is very relevant. However, that does not mean to allowing introduction of material evidence at leave stage and somehow pre-empt determination of triable issues in the substantive application for judicial review. In the referred case of **R.C, Exp National Federation of Self Employed and small business Ltd (supra)** the Court was clear that the purpose behind application for leave proceedings is to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints of administrative error and to remove the uncertainty in which public Authorities might be left. For example, shoddy applications filed against High Learning Institutions like the one before the court, may be that instituted by unregistered or unexamined student or that, though competent, is filed in a wrong registry/forum.

It is thus patent clear to me that at leave stage the duty of this Court is to ascertain whether the applicant has presented an arguable case and in addition he has established sufficient interests which according to Rule 4 of the Rules have been or he believes will be adversely affected by the complained of act or omission, proceedings or matter.

(See: **Emma Bayo v. the Minister for Labour and Youths Development and 2 Others**, Civil Appeal No. 79/2012, (Arusha Registry), (Unreported), CAT, and **Isaya Joseph Chawinga v. Commissioner General of Immigration Services and Hon. Attorney General**, Miscellaneous Cause No. 50 of 2020, High Court Main Registry, (unreported)).

In view of the foregoing, I hold that so long as the respondents do not object, as averred in Paragraph 8 of their counter affidavit above, that the applicant was duly registered by the 1st Respondent and taken university examinations, the question whether or not reason/s was/were accompanied to the 2nd Respondent's letter (annexture A1) which reads in part- *"Be informed that, the Chairman of Senate on behalf of the University Senate on 12th December, 2020 DISAPPROVED your request for appeal against university examination results for the 2019/2020 Academic Year."* can only be proved or disapproved by a substantive application for judicial review. Under the circumstance, the applicant cannot be part of the busy bodies referred to by Mr Nyakiha above.

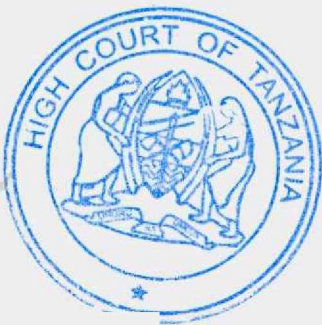
Therefore, the reckless, general and speculative submission by Mr. Nyakiha that by the court allowing the instant application it would be committing academic suicide in the country because there are many students like the applicant who think studying serious is not necessary,

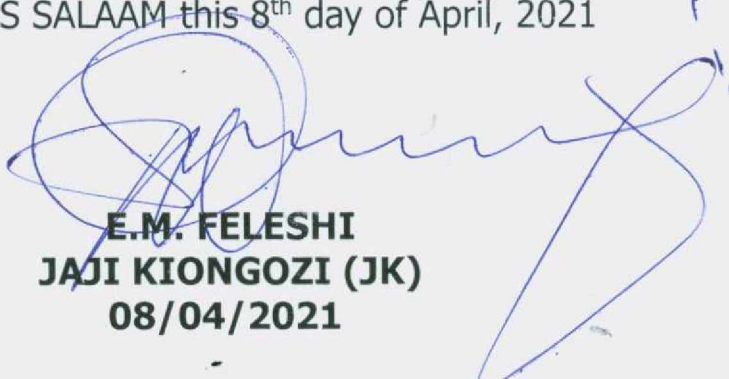
was unwarranted, premature, and a misleading one. A learned counsel well guided by law should always know how to choose his words as some require to be accompanied by evidence at appropriate time and stage. There is no doubt that this stage and forum are not appropriate for that.

It is from the above in unison, this Court finds merit in the present application. Consequently, leave to apply for prerogative orders of *certiorari* and *mandamus* is hereby granted with parties ordered to bear their own costs.

It is so ordered.

DATED at DAR ES SALAAM this 8th day of April, 2021




E.M. FELESHI
JAJI KIONGOZI (JK)
08/04/2021

COURT:

Ruling delivered this 8th day of April, 2021 in presence of Mr Nuhu Haule, Advocate holding brief of Mr. Gidion Mandesi, Advocate for the Applicant, and Ms Debora Mcharo, learned State Attorney for the Respondents.



E.M. FELESHI
JAJI KIONGOZI (JK)
08/04/2021