IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

Misc. CIVIL CAUSE No. 1 OF 2020

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

AND

IN THE MATTER OF IMMIGRATION ACT [CAP. 54 R.E OF 2016]

AND

IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) ACT [CAP. 310 R.E 2019]

AND

IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND MISCENELLANEOUS PROVISIONS) (JUDICIAL REVIEW PROCEDURE AND FEES) RULES GN. No. 324 of 2014

AND

IN THE MATTER OF AN ORDER OF DEPARTURE ISSUED BY IMMIGRATION DEPARTMENT ON 12TH DECEMBER 2019; AND

IN THE MATTER OF VIOLATION OF THE PRINCIPLE OF NATURAL JUSTICE

BETWEEN

VIRGINIA RUKUNDA MAFUKO ---------- APPLICANT

Versus

1. THE COMMISSIONER GENERAL OF IMMIGRATION
2. THE ATTORNEY GENERAL ---------- **RESPONDENT**

RULING

01.07.2021 & 05.07.2021

Mtulya, J.:

Mr. Projestus Prosper Mulokozi, learned counsel for Ms. Virginia Rukonda Mafuko (the Applicant) approached this court on 13th January 2020 praying for orders of certiorari and mandamus. In the chamber summons supported by affidavit in support of the application, Mr. Mulokozi for his client prayed this court to quash a decision of the Commissioner General of Immigration (the First Respondent) of deporting the Applicant from the United Republic of Tanzania and compel the First Respondent to immediately return a Certificate of Naturalization numbered 44326 of 1st June 1983 (the certificate) which was forfeited by the First Respondent.

Undisputed facts which were registered in the Application and during the hearing of the Application show that the Applicant has been living in Tanzania undisturbed since 1983 and participated in public affairs, including participation in elections conducted in this

State of Tanzania. However, the Applicant and the First Respondent are in contest disputing the authenticity of certificate which was forfeited by the First Respondent sometimes in September 2019 hence the Applicant was deported to Rwanda through Rusumo Boarder of Ngara. The claim of the Applicant in this Application is on the certificate which was forfeited without affording the Applicant the right to be heard. According to Mr. Mulokozi, the forfeiture of the certificate is bad in law and the alleged deportation has no legal foundation in immigration laws.

When Mr. Mulokozi was given the floor of this court to explain his complaint during Civil Session Cases hearing on 1st July 2021, he briefly submitted that the First Respondent arrested, forfeited the certificate and deported the Applicant without abiding with the principles enshrined in natural justice. Mr. Mulokozi submitted further that even the order which deported the Applicant is silent on the reasons and in any case it is titled [*Amri ya Kuondoka Nchini (Order of Departure*), which is not known in immigration laws. Finally, Mr. Mulokozi submitted that the Order does not display either the drafter or appropriate officer who signed it and it is not supported by the signature of the Minister responsible for matters relating to immigration.

In support of his submission, Mr. Mulokozi cited the authority in **Mohamedi Jawadi Mroush v. Minister for Home Affairs** [1996] TLR 142 stating that order issued by immigration cannot stand as it is *utra vires* and breach section 25 (2) of the Act which require prohibited immigrants to be brought to the court of law instead of forfeiting their certificates.

The submission and citation of the precedent in **Mohamedi Jawadi Mroush v. Minister for Home Affairs** (supra) was protested by learned State Attorney Mr. Gerald Njoka who briefly replied that the action of the First Respondent is supported by section 12 (1) (p) of the Act which empowers the First Respondent to remove all prohibited unwanted or undesirable immigrants; section 25 (2) (c) of the Act which allows the First Respondent to arrest, put in custody and conveying prohibited immigrants to any place outside Tanzania; and the departure order is backed by section 27 & 40 (2) of the Act as the certificate was obtained by fraud and the Applicant was supposed to be deported to her country of origin.

With regard to the right to be heard, Mr. Njoka submitted that the Applicant was given an opportunity to be heard as she submitted her documents to the First Respondent and after vetting they were found to be forged as per record in the First Respondent files and

therefore it was proper to expel him as per requirement of the law in section 23 (1) (g) of the Act. With regard to the precedent in **Mohamedi Jawadi Mroush v. Minister for Home Affairs** (supra), Mr. Njoka opined that it cannot be invited in the present circumstances and in any case the cancellation of the Applicant's permit in the precedent was from a third party, since the Applicant was out of the country at the time of cancellation.

In a brief rejoinder, Mr. Mulokozi contended that all sections cited by Mr. Njoka cannot apply in the present circumstances as the Applicant was not given the right to be heard as part of natural justice and in any case the procedure under section 27 of the Act was not followed. Mr. Mulokozi submitted further that the Applicant was expelled without any signature or order of the Minister responsible for immigration matters. According to Mr. Mulokozi the proper procedure would have been to give the Applicant the right to be heard and reasons for forfeiture before deporting her to any other country or alternatively bring her to court of law to reply her charges.

On my part, I think, this court was invited to determine a dispute on whether the First Respondent afforded the Applicant principles in natural justice when forfeiting the Applicant's Certificate of Naturalization numbered 44326 of 1st June 2018. My understanding

tells me that the principle require the duty to act fairly on part of judicial or administrative body before taking any decisions which affects rights or interests of any person. The principles entails three important rules, *viz*: opportunity to hear the affected party (*audi alteram partem*), rule against bias (no one should be a judge on his own cause - *nemo judex in causa sua*) and reasons for any decision taken.

It is fortunate that the principle had already received judicial consideration of this court **Abdillah Juma v. Salum Athumani** [1986] TLR 240 and Court of Appeal in **Mbeya Rukwa Auto Parts and Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002; **TANELEC Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018. According to the Court of Appeal in the precedent of **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44, the principle crossed restrictions from a mere principle of natural justice to human right principle and currently enjoy constitutional status enacted in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002]. Therefore, breach of the rules in natural justice, is violation against constitutional provisions.

In the present Application, there are complaints on fair hearing and decision without reasons. Mr. Mulokozi submitted that his client's certificate was forfeited without being afforded the right to be heard and was not given the reasons for the decision. He complained further that the order in the name of *Order of Departure* is not known in the Act and in any case there are no names of officer or officers who signed it or received consent of the Minister responsible for immigration matters.

During the proceedings, Mr. Njoka in his reply contended that the Applicant was given the right to be heard and submitted his documents for vetting and the *Order of Departure* is part of the interpretation of the deportation order in sections 27 & 40 of the Act as any word can be used by the First Respondent in expelling illegal immigrants. However, Mr. Njoka was silent on who signed the *Order of Departure*, reasons in the *Order of Departure* and whether it received consent of the Minister responsible for immigration affairs.

I understand, Mr. Njoka during proceedings prayed this court to give an opportunity to the First Respondent to rectify some issues which are complained by the Applicant. However, the prayer was not received well with Mr. Mulokozi contending that Mr. Njoka impliedly admitted the claims of the Applicant and his prayers cannot be

entertained at this stage. According to Mr. Mulokozi such prayer is like cross appeal and in any case, the procedures in natural justice have already been breached and illegal order must be quashed rather than qualified by order of this court.

It is fortunate that parties are in agreement that there are such matters which are not certain and settled in the Act and principle of natural justice. The Act is silent on *Order of Departure* and in any case it is silent on who issued it and do not cherish the law in section 27 of the Act. Orders of this nature cannot be allowed by this court which cherish proper application of the laws in lower courts, tribunal or administrative bodies (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed,** Civil Appeal No. 262 of 2017). Even if it is assumed all is well with the *Order of Departure,* but violations of rules of natural justice on the right to be heard and rights to know reasons for the decision, may render the order invalid.

This court was invited in **Mohamedi Jawadi Mroush v. Minister for Home Affairs** (supra) to determine the issue of natural justice in respect to the right to be heard. The facts of the precedent briefly show that the Applicant in that application arrived in Tanzania during the course of 1987 and was subsequently granted a Residence Permit Class A No.004307, issued on 14 September 1990. Renewed on 16

September 1993, the permit was to remain current until 12 September 1994. In the interim, however, it was cancelled by the Director of Immigration Services and duly confirmed by the Minister for Home Affairs on 2 December 1993.

The Applicant contended that the cancellation of the permit was illegal due to failure to afford the Applicant right to be heard and absence of reasons for the decision. The court held that once a permit is granted to an immigrant, he has the right to remain in the Republic until such permit expires. If the permit should be revoked during its currency, the immigration authorities have a duty to give reasons for such revocation and to afford the affected person the opportunity of being heard, prior to a final decision being taken. Finally, this court advised that discretionary powers of administrative bodies to be exercised fairly, and this requires adherence to the rules of natural justice which include the right to be heard.

I think, the same advice of this court in 1996, it is still valid today, 2021. Discretionary powers must be exercised fairly, and this requires adherence to the rules of natural justice which include the right to be heard and reasons for the decision. The principles are currently cherished in article 13 (6) (a) of the Constitution, and in any case are part of human rights.

Having said so, and considering the First Respondent did not abide with the principles in natural justice, I hereby issue an order of certiorari quashing the *Order of Departure* from the office of the Commissioner General of Immigration which forfeited the Certificate of Naturalization numbered 44326 of 1st June 1983. I further issue an order of mandamus against the Commissioner General of Immigration ordering her to restore the forfeited the Certificate of Naturalization numbered 44326 of 1st June 1983 to the Applicant forthwith without any further delay.

It is do ordered.

F.H. Mtulya

Judge

05.07.2021

This ruling was delivered in chambers under the seal of this court in presence of learned State Attorney Mr. Lameck Butuntu and in absence of the Appellant's learned counsel Mr. Projestus Prosper Mulokozi.

F.H. Mtulya

Judge

05.07.2021