

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA
MISCELLANEOUS CIVIL CAUSE NO 25 OF 2021
MAULID OWIMBAAPPLICANT
VERSUS
THE DISTRICT COMMISSIONER
FOR TARIME DISTRICT.....1ST RESPONDENT
THE DISTRICT EXECUTIVE DIRECTOR FOR
TARIME DISTRICT.....2ND RESPONDENT
ATTORNEY GENERAL3RD RESPONDENT**

RULING

16th & 31st August, 2021

Kahyoza, J.

Before me is an application for leave to apply for an order of certiorari to quash the decision of the District Commissioner for Tarime District to remove Maulid Owimba the applicant, as a butcher. The application was required to be made *ex-parte* in by Chamber Summons under rule 5 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310]. However, the applicant filed an *interpartes* application.

The respondent's State Attorney appeared but did not wish to oppose the application. The issue is whether the applicant has established a prima facie case for the application to be granted.

The application was supported by the applicant's affidavit, the statement providing for the name and description of the applicant, the relief sought and the grounds on which the relief is sought. The applicant's advocate contended that in a case like this the applicant has to establish that he has an arguable case. To buttress his position he cited the case of **Registered Trustees of Juma Mosque & Another V. District Commissioner for Nyamagana District & Another** Misc. Cause No. 8/2019 HC at Mwanza

I examined the documents attached to the application and found that substantially the applicant complied with the legal requirement, except that I could not see documents the applicant alleged were attached as A1.

The law is settled that the order certiorari is discretion remedy. It is not available as a matter of right and issued as a matter of course. For that reason, before applying order of certioran the applicant has to seek and obtain leave from this Court. Leave shall be granted where it is proved that the application was made within six months from date of the order sought to be quashed and also that there is no any convenient or feasible remedy within reach of the applicant. See **Lakam V. Town Director**(Arusha) (1986) TLR 326.

The purpose for applying for leave is to filter out applications which are groundless. This position was stated in the book "JUDICIAL REMEDIES IN PUBLIC LAW Second Edition by Clive Lewis at page 263 it is stated, thus-

"The requirement of permission is designed to filter out applications which are groundless or hopeless at an early stage. The purpose 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 "

The learned author goes on to state that factors to be considered in determining whether to grant permission are:

- 1. The applicant must demonstrate that there is an arguable case that a ground for seeking judicial review exists;*
- 2. The applicant is required to show sufficient interest in the matter to which the application relates;*
- 3. That the applicant has acted promptly;*
- 4. The applicant has to show that there is no remedy which exists.*

The conditions for granting leave discussed by the above learned author are like the conditions stated and considered by the Court of Appeal in **Emma Bayo v. The Minister for Labour & Youths Development and Others**, Civil Appeal No. 79 of 2012. In that case the Court of Appeal stated that:-

*"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 scrutinized the affidavit, and the attached documents to find out if the applicant established an arguable case. Unfortunately, I find that the applicant did not make such a case. The applicant contended that he was a butcher for more than 15 years, and that on the 22nd April, 2021, the first respondent via the second respondent removed him from the said position without giving him the right to be heard. He also added that the act of removing him was *ultra vires*. The affidavit and the attached documents did not point out that the applicant was butcher and that his position was abolished or he was removed without being heard. The affidavit and statement, which are the bases for applying for the order of *certiorari* do not disclose facts that the applicant has sufficient interest to be allowed to bring the main application. The applicant's right to hold the position of the butcher is not clearly shown from the legal instrument and the attached documents thereto.

In view of what is stated above, I find that the application has not met the threshold of granting an application for leave to apply for order of *certiorari*. Consequently, I dismiss the application with no order to costs.

I so order.



J. R. Kahyoza

JUDGE

31/8/2021

Court: Ruling delivered in the absence of the parties duly notified. B/C Millinga present.



**J. R. Kahyoza,
JUDGE
31/8/2021**