

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**MISC. CIVIL CAUSE NO. 1 OF 2019**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDER  
OF CERTIORARI**

**AND**

**IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND  
MISCELLANEOUS PROVISIONS) ACT, CAP 310 (R.E 2002)**

**AND**

**IN THE MATTER OF AN APPLICATION TO CHALLENGE THE DECISION OF  
THE MINISTRY OF LIVESTOCK AND FISHERIES TO COMPOUND OFFENCES  
UNDER THE TANZANIA FOOD DRUGS AND COSMETICS ACT, NO.1 OF 2003  
AND THE STANDARDS ACT, NO. 2 OF 2009.**

**BETWEEN**

**TARANGIRE RIVER CAMP LIMITED.....APPLICANT**

**VERSUS**

**MINISTRY OF LIVESTOCK AND FISHERIES.....1<sup>ST</sup> RESPONDENT**

**TANZANIA FOODS AND DRUGS AUTHORITY.....2<sup>ND</sup> RESPONDENT**

**TANZANIA BUREAU OF STANDARDS.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

## **RULING**

24/8/2021 & 17/9/2021

### **ROBERT, J:-**

In this application, the Applicant **Tarangire River Camp Limited**, sought leave of this court to file an application for certiorari to quash and declare the decision of the Ministry of Livestock and Fisheries of compounding offences to have been made without authority, in excess of powers and illegality. The application is supported by an affidavit sworn by **Ms. Nargis Mohsin Lalji**, principal Officer of the Applicant.

The Applicant's depositions reveals that on 30<sup>th</sup> day of January, 2019 Inspection Officers from the Ministry of Livestock and Fisheries named **Jumaa Shehemba, Marko Kimolo** and **Sophia Mlobe** visited her premises located at Vilima Vitatu Street, Babati District in Manyara Region. Upon arrival they requested to inspect food products and store. In the process they inspected meat and dairy products like cheese, yoghurt, butter and strawberry. Thereafter, they alleged that some of the inspected products had expired while others were not labelled and packed contrary to the legal requirements. Consequently, they ordered the Applicant's employee to sign the documents they came with as a matter of procedure.

Later, it turned out that the said employee had signed a document which displayed the offences committed and their respective fine.

The Applicant was advised by his legal counsel Mr. Benedict Alex, that the said decision by the Ministry of Livestock and Fisheries is amenable for judicial review since the Respondent had no authority to compound offences under the laws in which she was purporting to act, she used a wrong provision to compound the said offences, there was no legal procedure to be followed and she acted in excess of her powers.

The Respondents filed their joint counter affidavit sworn by **Mr. Ayoub Rashid**, State Attorney and joint supplementary counter affidavit sworn by **Mr. Jumaa Semkiwa Shehemba**, Diary processing Service Officer from the office of Ministry of Livestock and Fisheries

When the application came up for hearing, the Applicant was represented by **Elizabeth Kabwe**, learned counsel who was holding brief for Kemmy Mugini, learned counsel for the Applicant whereas the Respondents were represented by **Mr. Peter Msetti, Senior** State Attorney and Lucy Mallya, State Attorney.

Mr. Msetti addressed the court to the effect that, the Respondents have decided not to oppose this application and implored the Court to grant leave for the Applicant to file the intended application for certiorari

in the interest of justice. Since the Respondents decided to support the application, Ms. Kabwe moved the Court to grant the prayers sought in the chamber summons.

Having considered the affidavit in support of this application, the Respondents' reply and the fact that the application is not resisted by the Respondents, I will now determine the merits of this application.

In order for the court to grant an application for leave to file an application for certiorari certain factors must be considered. In **R.V.T.R.C Exp National Federation of Self Employed and Small Business Ltd** (1982) A.C. 617 the court laid down criteria for granting leave for judicial review that:

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

It was also decided in the case of **Republic vs Land Dispute Tribunal Court Central Division and Another** [2006] 1 EA 321, that:

*"Leave should be granted, if on the material available the court considers, without going into the matter in depth, that there is an arguable case for*

*granting leave and that leave stage is a filter whose purpose is to weed out hopeless cases at earliest possible time, thus saving the pressure on the courts and needless expense for the applicant by allowing malicious and futile claims to be weeded out or eliminated so as to prevent public bodies being paralysed for months because of pending court action which might turn out to be unmeritorious”.*

Thus, it is apparent, based on the cited authorities, that leave is grantable upon a disclosure of the prima facie grounds.

In the present case, the Applicant's affidavit proved not only that the Applicant has sufficient interest in the matter, but also that he has an arguable case for grant of leave. If the said facts are true, would justify the grant of the intended judicial remedies.

Accordingly, I hereby grant the Applicant leave to apply for an order of certiorari to challenge the Respondents' acts. Parties to bear their own costs.

Ordered accordingly.



  
K.N.ROBERT  
JUDGE  
17/9/2021

