

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA
MISCELLANEOUS CIVIL CAUSE NO. 02 OF 2021
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF
CERTIORARI AND MANDAMUS
AND
IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND
MISCELLANEOUS PROVISIONS) ACT, CAP 310 [R.E. 2019]
AND
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW AGAISNT THE
DECISION OF MBEYA UNIVERSITY OF SCIENCE AND TECHNOLOGY
BETWEEN
HAJI JUMA HUSSEIN.....APPLICANT
AND
MBEYA UNIVERSITY OF SCIENCE AND TECHNOLOGY.....1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT
RULING

Date of Hearing: 21/10/2021
Date of Ruling : 08/12/2020

MONGELLA, J.

This application is brought under section 2 (3) of the Judicature and Application of Laws Act, (Cap 358 R.E. 2019); section 19 (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap 310 R.E. 2019 and Rule 5 (1) and (2) (a) (b) (c) (d) of the Law Reform (Fatal



Accidents and Miscellaneous Provisions) Act (Judicial Review Procedure and Fees) Rules, 2014.

In this application, the applicant seeks to be granted leave to file an application for judicial review seeking for orders of certiorari to quash and set aside the decision of the 1st respondent contained in letter with Ref. MUST/2018101123/2018/MST/07 dated 21st May 2021, which disqualified the applicant from appearing in any University examination for a period of three (3) years. He is also seeking for orders of mandamus to compel and direct the respondents to act according to the law and thereby allow the applicant to resume classes and complete first and second semester examinations for the academic year 2020/2021. The application is supported by the affidavit of the applicant.

Both parties were represented. The applicant was represented by Mr. Stanislaus Michael, learned advocate, while the respondents were represented by Mr. Francis Rogers and Ms. Lugano Mwakilasa, both senior state attorneys. It was argued orally.

Mr. Michael while referring to Rule 4 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure and Fees Rules of 2014, submitted that for one to challenge the decision of an administrative body, he has to prove that he has sufficient interest on the decision to be challenged. In consideration of the said provision, he argued that the act of MUST (1st respondent) to discontinue the applicant from studies for about three years attracts the intervention by this Court. He said so arguing that the interest of the applicant in pursuing his studies



has been adversely affected by the decision. He referred the Court to annexure H3 on the applicant's affidavit, which is the letter by the University stating that the decision by MUST Senate is final and conclusive.

Considering the contents of annexure H3, he argued that the only remedy available for the applicant is to apply before this Court for leave to apply for judicial review. Referring to paragraph 5, 7, and 10 of the applicant's supporting affidavit, Mr. Michael listed the issues calling for determination under judicial review as follows:

1. Whether or not the booklet in question with serial no. 29588 was issued by the University (MUST).
2. Whether or not the booklet in issue amounted to unauthorised material.
3. Whether or not the principles of natural justice were adhered to before reaching the decision by the University.

He concluded that it is for the issues above that the applicant prays for the application to be granted so that the decision by MUST can be reviewed.

The respondent's counsels basically supported the application. In the submission presented by Mr. Rogers, they submitted that the Court, in granting the application, is supposed to adhere to the conditions set out under Rule 4 of the Law Reform (Fatal Accidents and Miscellaneous



Provisions) Judicial Review Procedure and Fees Rules of 2014 and the Court of Appeal decision in **Emma Bayo vs. Minister for Labour and Youth Development & 2 Others**, Civil Appeal No. 79 of 2012. They were of the view that the applicant has passed the test set out under the law, thus should be granted the application.

As argued by the counsels for both sides the application at hand is governed under **Rule 4 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure and Fees Rules of 2014**, which provides for the person entitled to apply for judicial review. It states:

"A person whose interests have been or believes will be adversely affected by any act or omission, proceeding or matter, may apply for judicial review."

As settled by the CAT in the case of **Emma Bayo** (supra), the Court in granting the application is supposed to:

- (i) Satisfy itself that the applicant has made an arguable case to justify filing of the main application.
- (ii) Consider whether the applicant is within the six months' limitation period within which to seek judicial review of the impugned decision.
- (iii) Determine whether the applicant showed sufficient interest to be allowed to file the main application.



In the application at hand, the decision sought to be challenged was issued on 21st May 2021. The application at hand was filed in this Court on 18th June 2021, thus within time as specified under the law. Further, considering the contents of the applicant's affidavit and the submission made by Mr. Michael, the applicant's right to education is at stake whereby he has been banned from doing University examinations for a period of three years. In the circumstances, I agree with both counsels that he had demonstrated sufficient interest in filing the main application.

Considering the issues for determination in the main application as presented by Mr. Michael, particularly on whether the principles of natural justice were adhered to by the University before reaching its decision, I find that the applicant has advanced an arguable case to be presented and determined in the main application.

In the circumstances, I find the application meritorious and grant it accordingly. The applicant shall file the application for judicial review within 45 days from the date of this ruling. Each party shall bear his own costs of the suit.

Dated at Mbeya on this 08th day of December 2021.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 08th day of December 2021 in the presence of Mr. Stanislaus Michael, learned Advocate for the applicant; Ms. Lugano Mwakilasa, learned senior

state attorney for the 1st respondent; and Mr. Joseph Tibaijuka,
learned state attorney for the 2nd respondent.



L. M. Mongella
L. M. MONGELLA

JUDGE