

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

Miscellaneous cause No. 18 of 2022

STOMIN HUDSON MASAKA APPLICANT

VERSUS

ATTORNEY GENERAL RESPONDENT

RULING

16/6/2022 and 24/6/2022

MZUNA, J.:

Stomin Hudson Masaka, the applicant herein was an employee of Tanzania Institute of Education since July 2009 till when he was terminated on 27th September 2018 by Public Service Commission. Aggrieved by the decision of the Public Service Commission he appealed to the President of United Republic of Tanzania who upheld the decision of the commission.

Sill minded, the applicant brought this application under section 2(3) of the Judicature and Application of Laws Act, Cap 358 R.E. 2019 and Rule 5(1)(2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedures and Fees) Rules, GN No. 324 of 2014 praying for the following (among others): -

- 1. That, this honourable court be pleased to grant leave to the applicant to apply for prerogative order of CERTIORARI to quash the decision of*

the President of the United Republic of Tanzania on termination of the Applicant.

- 2. That, this honourable court be pleased to grant leave to the applicant to apply for prerogative order of MANDAMUS to compel the President of United Republic of Tanzania to Reinstate the applicant as Senior Curriculum Developer.*

The application is supported by the sworn affidavit of Applicant one STOMIN HUDSON MSAKA and accompanied by the Statement of facts.

During hearing of this application, the Applicant was represented by Mr. Richard Clement, learned Advocate whereas Ms Gati Mseti, State Attorney appeared for Respondent.

The background story leading to this dispute is that the applicant was appointed as Coordinator in writing different text books specifically English Language for Secondary Schools for Form Five and Form six. This was one of the move taken by the Tanzania Institute of Education to rewrite various text books for Primary and Secondary Schools. In due course of doing so, some defects were revealed in the printed text books including 'mass production" by a team of experts. This necessitated disciplinary measures against the concerned employees including the applicant allegedly that he occasioned loss due to his negligent acts. By then he was serving the position of Senior Curriculum Developer I-English.

He was terminated on 27th September 2018. Dissatisfied by the findings of the Commission, he appealed to the President of United Republic of Tanzania who upheld the decision of the Commission hence the instant application.

Let me say from the outset that Ms Gati Mseti told the court that they do not object the application and the court ruled out for the interest of justice the application to proceed ex parte.

The main issue is whether this application for leave has merits.

Submitting in support of the application, the learned advocate for the applicant prayed to adopt the affidavit as part of their submission and asked this honourable court to consider that the respondent did not object the application.

The gist of this application is well explained from paragraph 8 to 16 of the Applicant's affidavit. He submitted that on 18th September 2018 the applicant appeared to defend the charge against him but he was not given a chance by the Inquiry Committee to mitigate and the committee failed to make proper evaluation of the evidence submitted by both parties and without jurisdiction terminated the applicant on 27th September 2018. He was relieved from performing all official duties and functions by the Tanzania Institute of Education Council on 10th October, 2017 while

serving the position of Senior Curriculum Developer I-English following the evaluation report.

He urged the court to allow this application for the reasons among others that:- The Council had no powers to relieve him from duties because his salary was PIITS/2/4 therefore it is only the Appointments Disciplinary and Staff Development Committee which had powers to relieve him from duties for the purpose of conducting preliminary investigation.

That on 18th September 2018 the applicant appeared to defend the charge against him but he was not given a chance by the Inquiry Committee to mitigate and the committee failed to make proper evaluation of the evidence submitted by both parties and without jurisdiction terminated the applicant on 27th September 2018.

That the decision of the President in upholding the decision of the Commission did not consider the raised grounds of appeal. More so that the Tanzania Institute of education failed to establish and prove beyond reasonable doubt or on the balance of probabilities before the Inquiry Committee that he committed the offence of gross negligence and thereby causing loss to the Institution.

That, certificate of approval for mass production of the aforesaid text books was issued by Commissioner for Education not as alleged that it was the applicant who approved it.

Now on the issue under consideration. In Tanzania, when applying for prerogative orders the procedure is through two stages of application for leave and later for main application. The applicant herein has applied for leave where upon being granted will subsequently apply for the prerogative orders. In the case of **Emma Bayo Versus the Minister for Labour and Youths' Development and 2 Others, Civil Appeal No. 79 of 2012**, the Court of Appeal stressed that:-

"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."

This court is aware that the application is not disputed by the respondent and the letter which communicated the decision of the appeal to the President was communicated to the applicant on 20th December 2021 and this application was filed on 16th May 2022. The application was done before expire of six months from the date of impugned decision hence within the time. Also, the applicant has

established sufficient interests in the matter as he was employed by the Tanzania Institute of Development as per annexure "SM1" which is the letter of employment dated 7th of September 2009 and annexure "SM10" a termination letter dated 20th December 2021.

I am satisfied that this application has met all the three prerequisite conditions for granting leave to apply for judicial review as well stated in the case of **Emma Bayo vs the Minister of Labour and Youth Development and others** Civil Appeal No. 77 of 2012, Court of Appeal of Tanzania at Arusha (unreported), page 8. That is:-

First, existence of any arguable case in that there is need to consider issue of exercise of jurisdiction by the relevant Body/Authority; **Second**, the application has been preferred within six months limitation period counting from 20th December 2021 and this application was filed on 16th May 2022; **Third**, that the applicant has "sufficient interest in applying for the orders" because he was employed by the Tanzania Institute of Education. He was therefore personally affected by the said termination.

That said, this application is allowed, leave is granted for the applicant to apply for prerogative orders of certiorari and mandamus. The

same must be filed within 14 days from the date hereof as provided for under rule 8 (1) (b) of the Rules. No order as to costs.

It is hereby so ordered.



M. G. MZUNA,
JUDGE
24/06/2022