

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

**(MAIN REGISTRY)**

**AT DAR ES SALAAM**

MISCELLANEOUS CIVIL CAUSE NO. 11 OF 2022

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

**IN THE MATTER OF DISMISAL FROM EMPLOYMENT OF ENGELBERT  
LUCAS CHELELE**

**BETWEEN**

**ENGELBERT LUCAS CHELELE ..... APPLICANT**

**AND**

**THE POLICE FORCE, IMMIGRATION AND**

**PRISON SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**THE PERMANENT SECRETARY**

**MINISTRY OF HOME AFFAIRS ..... 2<sup>ND</sup> RESPONDENT**

**THE INSPECTOR GENERAL OF POLICE ..... 3<sup>RD</sup> RESPONDENT**

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

**RULING**

*7<sup>th</sup> to 23<sup>d</sup> June 2022*

**MZUNA, J.:**

This is an application for leave to file an application for Judicial Review for orders of certiorari and mandamus. The application has been preferred under Rule 5(1)(2)(a)(b)(c) and 5(3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 (the Rules). It is accompanied by an affidavit sworn by the applicant ENGELBERT LUCAS CHELELE and accompanied by the Statement of facts.

During hearing, the application was disposed through oral submission whereby the applicant was represented by Mr. Mwendu Mapembe learned Advocate while the respondents were defended by Ms. Rehema Mtulya assisted by Muniri Ally, all State Attorneys'.

The background story leading to this application is that the said applicant was an employee in the Ministry of Home Affairs as the Police Officer holding a rank of Superintendent of Police. He was accused of aiding some junior Police officers in obtaining falsified grades in their form IV certificates which upgraded them to senior grades. He was charged on three counts of disciplinary offences. He was convicted on both counts and ultimately dismissed from employment. His appeal was also dismissed by a Special Military Tribunal.

The sought application for leave (if granted), is intended to file an application for Judicial Review for orders (among others): -

*1. Certiorari quashing: -*

- i. The whole proceedings, judgement and findings of the military tribunal being tainted with serious illegalities and irregularities both of procedures and decision.*
- ii. The whole proceedings, judgement and findings of the military tribunal for being very unreasonable that no reasonable authority could have reached to that decision.*
- iii. The whole proceedings, judgement and findings of the military tribunal for lack of reason by both not taking into account matters*

*which ought to have been taken into account and taking into account matters which ought to have not taken into account.*

- iv. Letter dated 14<sup>th</sup> day of April 2020 by the first respondent which terminate (sic) the applicant from employment without having jurisdiction to exercise such powers.*
  - v. Letter dated 14<sup>th</sup> day of April 2020 by the first respondent and 15<sup>th</sup> day of May, 2020 by the 3<sup>d</sup> Respondent; as while the former is the decision reached by the 1<sup>st</sup> Respondent terminating the applicant from employment in Tanzania police force without any jurisdiction whatsoever to exercise such powers; the latter is the letter from the 3<sup>d</sup> respondent informing the applicant about the decision reached by the first respondent.*
  - vi. Letter dated 26<sup>th</sup> day of October, 2021 by the 2<sup>nd</sup> respondent upholding the decision of 1<sup>st</sup> respondent rendered on 14<sup>th</sup> day of April, 2020.*
- 2. An order for mandamus compelling the 2<sup>nd</sup> respondent to reinstate the applicant from his employment in Tanzania Police Force without loss of remuneration and other entitlement from the whole period which he was out of employment as the decision terminating the applicant's employment was in total violation of the principles of natural justice and lack of jurisdiction by the first respondent.*

*The main issue for determination is whether the application for leave is tenable in law?*

In his submission the learned counsel for applicant set his benchmark relying on the case of **Emma Bayo vs The Minister of Labour and Youth Development and Others**, Civil Appeal No. 77 of 2012 where the Court of Appeal of Tanzania at Arusha laid three prerequisite

conditions for granting leave, namely:- First, whether the applicant has made out any arguable case; Second, whether the application is within the six months limitation period allowed to seek a judicial review of the decision of a tribunal subordinate to the High court, Lastly, that the applicant has to show that he/she has sufficient interest to be allowed to bring the main application.

On the first prerequisite condition, he submitted that on the face of records it is clear that the 1<sup>st</sup> respondent had no jurisdiction to terminate the applicant's employment. As per annexure LLA-1 to the Applicant's affidavit, the applicant employment was terminated by the 1<sup>st</sup> respondent. He mentioned part IV of the Police Force Service Regulations 1995 to be relevant and provide an elaborate procedure on handling disciplinary proceedings involving police officer of the rank of Assistant Inspector to the rank of Assistant Commissioner. Regulation C.3(1), 3(a) and (4)(b) of the Police Force Service Regulations 1995 requires the disciplinary authority in case of any police officer with a rank of Assistant Inspector to the rank of Assistant Commissioner, (applicant inclusive) is vested to the Inspector General (3<sup>rd</sup> respondent). However, when a particular police officer is charged and found guilty with the offence whose punishment is that of dismissal, the Inspector General of police shall cease to have

jurisdiction. What the Inspector General of Police has to do is to submit the report on the investigation of the charge together with the other details of the matter to the Permanent Secretary Ministry of home affairs for consideration of report and determine the punishment if any to be imposed and inform the accused officer of such determination.

He went on saying, the 1<sup>st</sup> respondent is an appellate body of the 2<sup>nd</sup> respondent as per Regulation 41 of the Police Force, Immigration and Prison Service Commission Regulations, GN. No. 438 of 2015. To his surprise the 1st respondent, without jurisdiction hijacked the proceedings, process and power vested to the 2<sup>nd</sup> respondent in dealing with the records of inquiring with its finding and recommendation after receiving the same from Inspector General of Police and proceeded to terminate the applicant from employment. He said the respondents through the affidavit of Maurilio Fidelis Chang'a have disputed the applicant's allegation and will be given opportunity to be heard hence they will not be prejudiced in anyhow.

On the second prerequisite condition, the learned counsel submitted that the application is within the statutory time limit of six months under Rule 6 of the Rules. He mentioned Exhibit LLA-6, a letter dated 26<sup>th</sup> day of October, 2021 which informed the applicant the outcome of his appeal.

This communication triggered this application which was filed on 11<sup>th</sup> day of April, 2022 henceforth within the prescribed time limit of six months counting from the date in which the impugned decision was made and brought to the attention of the applicant.

Regarding sufficient interest on the part of the applicant, he said that the applicant was employee of the Tanzania Police Force from April 2000 to 15<sup>th</sup> May 2020 when he was informed by the 3<sup>rd</sup> respondent about termination of his employment. Further that the respondents in their joint affidavit admitted the facts as to the effect that the applicant was an employee of Tanzania Police Force and his employment was terminated by the 3<sup>rd</sup> respondent through a letter dated 14<sup>th</sup> April 2020. For that reason, the applicant has sufficient interests as per Rule 4 of the Rules. This marked the end of his submission.

On her part, Ms. Rehema Mtulya, the learned State Attorney submitted by adopting the contents of the counter affidavit and statement in reply to form part of her reply submission. The learned counsel said she failed to comprehend how the applicant's submission support the application. The grant of leave is entirely upon the applicant to show whether he has a prima facie case and whether there is gross violation of his right to be heard.

She went further submitting that in granting leave to apply for judicial review the court is bound by the position in **Emma Bayo vs the Minister of Labour and Youth Development and others**, (Supra) where the court restated the law governing the grant of leave to apply for judicial review. She maintained that the applicant was served with charges against him and that prior to the said termination was accorded with the opportunity to be heard. She added that having been heard, the inquiry was forwarded to the Inspector General of Police who also forwarded the same to the Permanent Secretary with his opinion for the applicant's employment to be terminated. The findings were forwarded to the Commission for determination of the proposed applicant's dismissal. Neither the Permanent Secretary nor the 3<sup>rd</sup> respondent had such power over officer of the rank of Assistant Inspector or Assistant Commissioner thus the 1<sup>st</sup> respondent correctly and accordingly terminated the applicant.

Again she says, leave to apply for orders the applicant should state sufficient interest in applying for same. The court has to consider whether a decision-making authority has exceeded its power, violated rules of natural justice, reached a decision which is no reasonable man would have reached or otherwise abuse its power. She cited the case of **Senai**

**Murumbe and Another vs Muhere Chacha** [1990] TLR 54 where the Court of Appeal of Tanzania laid down the circumstances under which prerogative orders may be issued. She concluded her submission by saying that the applicant has neither shown any unreasonable conclusion that was reached nor any rule of natural justice that has been violated.

Having heard the submissions from both parties, the question remains, has the applicant demonstrated three basic conditions which must exist before granting leave? 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**, (Supra) at page 8. That is, 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 26<sup>th</sup> October 2021 to the date of filing on 11<sup>th</sup> day of April, 2022 and; Third, that the applicant has "sufficient interest in applying for the orders" because he was in the first place employed in the Tanzania Police force before being summarily dismissed from employment. He was therefore personally affected by the said termination.



The arguments advanced by the learned State Attorney presupposes grounds upon which the main application could be dealt with like the argument that the proper procedure was followed, the argument that the material inquiry was forwarded to the Inspector General of Police who also forwarded the same to the Permanent Secretary with his opinion for the applicant's employment to be terminated. And that the findings were forwarded to the Commission for determination of the proposed applicant's dismissal.

This court has nothing to do with determination on merits of the intended main application for certiorari and mandamus. In the above cited case of **Emma Bayo vs the Minister of Labour and Youth Development and others**, (Supra), the Court of Appeal, Juma J.A (as he then was), insisted that the High court exercising judicial discretion in determining issue of leave, should not indulge itself in considering the main application. In so doing is to go, "beyond what was expected of the trial court at the stage/step of application for leave." The court described such conduct as "overstepping" on the main application.

In the light of the above discussion, this court finds that the application for leave has merit. The prayer for leave to file application for judicial review is granted. 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.**  
**23/06/2022**