

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM
MISC. CAUSE NO. 23 OF 2022**

PETER LUTASHOBYA BANDIO APPLICANT

VERSUS

ATTORNEY GENERAL RESPONDENT

RULING

19/7/2022 & 29/7/2022

MZUNA, J.:

This is an application for leave by the above mentioned applicant. The chamber summons in support of the application is couched in the following words: -

- 1. That, this Honourable court be pleased to grant leave to the applicant to apply for prerogative order for 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 applicant to apply for prerogative order of Mandamus compelling the President of the United republic of Tanzania to reinstate the Applicant as senior Curriculum Developer.*

Brief facts being that; The said applicant was employed by Tanzania Institute of Education as Curriculum Developer and was acting as the

Director of Education Materials Design and Development. He was interdicted due to some errors which were found in some text books for Standard one and two Primary Schools which were printed and then banned from use due to such errors.

Distribution of the said text books was stopped after the allegation of existence of editorial errors in 44 text books. Following such accusation, he was banned from duties on 18th October 2017 by the Council of Tanzania Institute of Education on grounds of negligence for failure to fully review them which made them to be below standard. Preliminary investigation was accordingly done. He was summoned to defend against the charge.

On 17th October 2018 he was terminated from employment by the Council. His appeal to the Public Service Commission met a snagging block following which he referred the matter to the President of the United Republic of Tanzania who upheld the decision of the Commission.

Being aggrieved by the findings of the President, the applicant has moved this court under section 2(3) of the Judicature and Application of the Laws Act, Cap 358 R.E 2019, Section 18(1) of the Law Reform (Fatal Accident and Miscellaneous Provisions) Act, Cap 310, R.E. 2019, and Rule 5(1)(2) and (3) of the Law Reform (Fatal Accident and Miscellaneous

Provisions) Judicial Review Procedures and Fees) Rules G.N. No. 324 of 2014, (herein after Judicial Review Rules), seeking leave.

During hearing of the application, Mr. Richard Clement, the learned counsel appeared for the applicant. On the other hand, Mr. Luoga, the learned State Attorney appeared for the respondent and conceded to the application.

The main issue is whether there are sufficient grounds upon which leave can be granted?

The learned counsel for the applicant prayed to adopt the affidavit of the applicant as part of his submission. He told this court that the applicant has interest in this matter because he was employed by the Tanzania Institute of Education. That, he was terminated by the employer and followed all the procedure laid down to challenge the said termination. That the last decision was issued on 23/7/2021.

Application for extension of time to file leave out of time was sought and granted vide Misc. Civil Application No. 7 of 2022. This application was filed well within 14 days' time granted in the order for extension of time. He went on saying that there are triable issues stated in the affidavit and statement of facts to warrant grant of leave to file application for orders of Certiorari and Mandamus.

This court has considered the facts as stated in the accompanying affidavit and statement of facts of the applicant together with the submission made by Mr. Richard Clement, the learned counsel for the applicant. As above noted, the learned State Attorney Mr. Luoga conceded to this application. The principles have already been set in an application for leave to apply for prerogative orders of Certiorari and Mandamus.

Factors for consideration on an issue of leave in view of the Court of Appeal decision in the case of **Emma Bayo vs Minister for Labour and Youths Development and 2 others**, Civil Appeal No. 79 of 2012, (Unreported) are:

a/ Existence of "any arguable case to justify the filing of the main application".

b/ 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."

c/ Whether "the applicant has shown that he or she has sufficient interest to be allowed to bring the main application."

(Underscoring mine).

(See also the case of Augustino Elias Mdachi and 2 others vs Ramadhani Omari Ngaleba, Miscellaneous Civil Application No. 315 of 2019 (Unreported).

The governing law is also in line with the above case law as well provided for under Rules 5(1) and 6 of the Judicial Review Rules which provides that ***"unless a leave to file such application has been granted by the Court in accordance with these rules."***

Further that such an application ***"is made within six months after the date of the proceedings, act or omission to which the application for leave relates"***.

Looking at the material facts especially paragraphs 3, 12,13,14, 18 and 20 of his affidavit as well as paragraph 21 of the statement of facts, it shows that the applicant was an employee of Tanzania Institute of Education and was terminated by the said employer. Had been personally affected. He exploited all available remedies internally challenging termination and the last decision was issued by the Honourable President of United Republic of Tanzania on 23/7/2021. There is an arguable case in the intended application for prerogative orders. This application is within time after an extension of time to file same out of time was granted.

That said, there is need for this court to adjudicate upon the legal issues raised by the applicant. The application which is uncontested

has merit. Leave to apply for Prerogative orders of Certiorari and Mandamus is hereby granted with no order as to costs.

Order accordingly.




M. G. MZUNA,
JUDGE.
29/07/2022