

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM**

MISCELLANEOUS CAUSE NO. 24 OF 2022

DR. DAUD ANYIGULILE KAIJIGILIAPPLICANT

VERSUS

TANZANIA INSTITUTE OF EDUCATION 1ST RESPONDENT

CHIEF SECRETARY.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

26/7/2022 & 12/8/2022

MZUNA, J.:

This is an application by **DR. DAUD ANYIGULILE KAIJIGILI** (the applicant herein) seeking for leave to file prerogative orders of certiorari and mandamus. The application has been preferred under Section 2(3) of the Judicature and Application of Laws Act, Cap 358 R.E. 2019 (Cap 358), Section 19(3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap 310 (Cap 310) and Rule 5(1)(2) (a)(b)(c) and (d) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedures and Fees) Rules, GN No. 324 of 2014] (The Rules).

The background story is to the effect that:- The applicant was an employee of Tanzania Institute of Education, the 1st respondent herein,

since 30th March 2020 as a Curriculum Developer grade III and later on promoted to Acting Director of Research, Information and Publication Department. He was suspended from employment through a letter dated 18th October 2017 and on 25th July 2018 he received another letter with reference number TIE/CPE/225/1 annexed with the charge informing him of the alleged misconduct. On 18th October 2018 the applicant was terminated from employment through a letter with reference No. TIE/CM/C/21/III/56 by said 1st Respondent. Aggrieved by the decision of the Permanent Secretary Public Service Commission, he appealed to the President of United Republic of Tanzania who on 21st January 2022 confirmed the decision of the Commission. The applicant was aggrieved by the decision of the President hence brought this application praying for leave:-

To file an application for Judicial review seeking orders of;

- i. Certiorari: to quash and set aside the decision of the President of the United Republic of Tanzania in a letter with reference No. CAB.30/536PF.509/9, dated 21st January 2022 which upheld the decision of the Permanent Secretary Public Service to terminate the applicant from employment.*
- ii. Mandamus: to compel and direct respondents to act according to the law thereby allow the applicant to resume from his previously employment position.*
- iii. Costs of the application.*

iv. Any other relief this honourable court deems fit and just to grant.

The application is supported by the affidavit sworn by one DR. DAUDI ANYIGULILE KAIJIGILI and accompanied by the Statement of facts.

During hearing of the application, the said applicant was represented by Mr. Kelvin Kidifu, the learned advocate whereas the respondents were represented by Mr. Boaz Msoffe, the learned State Attorney.

The main issue is whether leave should be granted to the applicant?

Let me say right from the outset that the learned State Attorney did not contest this application save for costs which he said each party should bear its own costs. He insisted that issue of costs should be considered at the judicial review stage not at the leave stage.

Arguing in support of the application, the learned counsel for the applicant is in agreement with the submission of the learned State Attorney that the application for leave should be granted because the applicant had demonstrated all the required conditions for grant of leave. He insisted that the applicant should be granted costs.

As a matter of fact, the applicable law, Rule 6 of "the Rules" provides that application of this nature must be filed "within six months after the date of proceedings, act or omission to which the application for leave

relates." This is a first prerequisite condition for the grant of leave. Other conditions are existence of an arguable case as well as whether the applicant has an interest in the matter. I am fortified to this view by the decision of the Court of Appeal in the case of **Emma Bayo Vs. The Minister for Labour And Youths' Development and 2 Others**, Civil Appeal No. 79 of 2012 where the Court at page 8 stressed that:-

*"...It is at the stage of leave where the High court satisfies itself that the applicant for leave has made out **any arguable case** to justify the filing of the main application. At the stage of leave the High court is also required to consider whether the applicant is **within the six months limitation period** within which to seek a judicial review of the decision of the tribunal subordinate to the High court. 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."*

(Emphasis mine)

My close reading to the affidavit of the applicant, the applicant has demonstrated under paragraphs 2 and 11 of the affidavit which shows he was employed by the first respondent and then terminated from employment on 18th October 2018 and subsequently thereafter lodged an appeal. His supplementary affidavit insists that he was affected.

Again paragraph 6 (a) (b) and (c) the applicant's statement demonstrates three points which he considers to raise an arguable case including but not limited to error of law; Unreasonableness; And breach of natural justice.

Supporting the above findings, the applicant had annexed documents **BMA1** a letter of employment, **BMA2** a letter of promotion, **BMA 4** suspension letter, **BMA5** which is termination letter from 1st respondent and **BMA9** which is the final decision by the President. Also, the decision to uphold the finding of the commission was issued on 21 January, 2022 and this application was filed on 20th June 2022, that means within statutory time limit of six months. The applicant has demonstrated sufficient interests in the matter, existence of an arguable case as well as the fact that the application is within time.

Since the respondents did not contest this application despite the fact that they filed a joint counter affidavit to the supplementary affidavit, this court finds that this application has merits. It is my findings that this application raises serious contentious issues of law which cannot be left undetermined. It is one of the fit applications for consideration by way of judicial review. I grant the applicant such avenue for redress.

That said, this application for leave is allowed. Leave is hereby granted to the applicant to apply for prerogative orders of certiorari and mandamus. Each party to bear its own costs.

It is hereby so ordered.



M. G. MZUNA,

JUDGE.

12/08/2022.