

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(MAIN REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS CAUSE NO. 19 OF 2022

**IN THE MATTER OF APPLICATION FOR ORDERS OF MANDAMUS
AND PROHIBITION**

AND

**IN THE MATTER OF AN APPLICATION TO CHALLENGE THE
DECISION OF THE DISTRICT EXECUTIVE DOIRECTOR OF BAGAMOYO
DISTRICT COUNCIL, ON ILLEGAL SUSPENSION OF PRIMARY MINING
LICENCE 0450DSM (PML) TO ONE M/S MBARAKA YAHAYA RAMADHANI**

BETWEEN

MBARAKA YAHAYA RAMADHANI APPLICANT

AND

THE DISTRICT EXECUTIVE DIRECTOR

OF BAGAMOYO DISTRICT COUNCIL.....1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

10/06/2022 & 24/06/2022

MZUNA, J.:

Mr. Mbaraka Yahaya Ramadhani, the applicant herein, has filed this application seeking for leave to file an application for prerogative orders of Mandamus and Prohibition against the Executive Director of Bagamoyo

District Council and The Attorney General, referred herein after as the 1st and 2nd respondent respectively.

The application is couched in the following words:-

"(a) That, this Honourable court be pleased to grant leave to file an

Application for a prerogative orders of Mandamus and Prohibition:-

- (i) Against the District Executive Director of Bagamoyo District council on illegal Cancellation and suspension of a permit to excavate sand minerals given to a Primary Mining Licence 0450 (PML) to one M/s Mbaraka Yahaya Ramadhani.*
- (ii) Directing, any further, additional, supplementary or subsequent orders prohibit **the District Executive Director of bagamoyo District Council** on illegal Cancellation and suspension of a Permit to excavate sand minerals given to a Primary Mining Licence 0450 DSM (PML) to One M/s Mbaraka Yahaya Ramadhani*

(b) Costs to be provided for."

The application has been preferred under section 18 (1) of the Law Reform (Fatal Accidents and Miscellaneous Provision Act, Cap 310 (RE 2019) and Rules 4 and 5 (1) (2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014) herein after referred to as Cap 310 and the Rules respectively.

The brief background story as can be gleaned from the filed affidavit of the applicant as well as the oral submission of Mr. Ramadhani Sebeku, the learned counsel for the applicant is to the effect that, the applicant has a Primary Mining Licence granted by the Ministry of Minerals and the Mining Commission to prospect and mine for sand at Magore Kiromo Ward within Bagamoyo District. The first respondent granted him a permit No. 0450 DSM to excavate sand therefrom.

The present application was prompted by a letter of 26th November 2021 with Ref. No. HWB/A.60/31/VOL.V/61 issued by the first respondent instructing the applicant to stop from all mining activities allegedly that the mining activity was carried out at Mataya Bondeni and not Magore a fact which according to the applicant was untrue. He lodged a complaint and of course some investigation on the matter by the OCD was conducted which revealed that the alleged defiance of the permit was not true. The applicant had ever since been stopped to excavate sand while his permit was still subsisting and had by then entered into contracts with the owner of the plot one Nelson Victor Nyirenda where he excavates sand as well as hiring sand excavating machine from Kandawale Kipilipili Building Supplies.

To his surprise and total astonishment, on 22nd November, 2021 the 1st respondent issued a letter (annexed to the affidavit) with reference No. HWB/M.10/7/121 which, though did admit was mining at the proper allocated area as per the licence No. 0450, yet said the permit was granted to him wrongly as the area was not meant for mining of sand. He decided to bring this application as his licence was renewed since March 2022 and is valid for one year.

Hearing of this application proceeded orally. At first, for reasons to be disclosed here, it was ex parte hearing as Ms. Pauline Mdendemi, the learned State Attorney for the second respondent did not file counter affidavit and insisted that she did not object it. Nevertheless, when I was in the process of composing the ruling it came to my mind through judiciary of Tanzania website TANZLii, that similar ruling was issued by Hon Mgetta, J on 17th March, 2022. I summoned parties to address me on the propriety of the intended ruling which on the face of it, it was *res judicata*.

The main issue is whether there are grounds to warrant the grant of the application?

The applicant prayed for leave for the reasons according to the learned counsel that the first respondent exercised powers not vested on her and therefore acted ultra vires as there are no regulations which were issued by the Minister for Minerals granting him powers to cancel the permit. It is for that reason they have applied for leave in order to apply for orders of mandamus and prohibition.

The court was referred to the case of **Philibert Mtei & Another v. The Ubungo District Commissioner & Another**, Misc. Civil Cause No. 3/2018, High court Dsm Main Registry (unreported) on the existence of three factors to warrant grant of leave. That the applicant was denied right to be heard citing the case of **In The Matter of Application by Simeon Manyaki And In The Matter of The Executive Committee And Council Of The Institute Of Finance Management** [1984] TLR 304 (HC).

Responding on the issue of res judicata he insisted that the matter is not res judicata because even though parties are the same, the first application was on suspension of licence while the present application is on the cancellation of permit by the first respondent.

On her part, Ms. Pauline Mdendemi, the learned State Attorney was of the view that indeed the matter had already been litigated upon and is between same parties and therefore it is covered under *res judicata*. She urged the court to dismiss this application.

In his rejoinder submission Mr. Ramadhani Sebeku reiterated his earlier submission.

In fine. My close reading on the said ruling specifically at page 6 clearly shows that leave was granted to the applicant to apply for judicial review of mandamus and prohibition following cancellation of his permit (not licence as alleged by Mr. Sebeku). The said permit which was cancelled was in relation to the letter of 22/11/2021 which is also subject for determination in the present application.

May be for emphasis, the principle of *res judicata* had for long been well stated under section 9 of the Civil Procedure Code, [CAP 33 R.E.2002]. In the case of **Umoja Garage V NBC Holding Corporation** [2003] TLR.339 the Court of Appeal held that:

"Since by the time the previous suit was filed the facts giving rise to the cause of action in the subsequent suit were known to the appellant, the matter raised in the subsequent case are deemed to have been a matter, directly

and substantially, in issue in the previous case and the principle of res judicata applies.”

I would say though the principle of res judicata under the above cited provision relates to a suit, I am convinced it equally applies in an application where it had been conclusively determined and *“the matter raised in the subsequent case are deemed to have been a matter, directly and substantially, in issue in the previous case.”*

In the said ruling, Hon. Mgetta, J said:-

“I have no doubt that this application was brought within six months counting from 22/11/2021 when the applicant’s permit was cancelled to 16/12/2021 when this application was filed...”

I consequently grant leave to him to file application for prerogative orders of mandamus and prohibition.”

(Underscoring mine).

That is a replica of what has been stated in the affidavit of the applicant under paragraph 11. It reads:-


“...surprisingly on 22nd day of November 2021, 1st Respondent issued a letter with reference No.HWB/A.60/31/VOL V/81 to cancel/ban permit...” (Emphasis mine).

I am convinced the present application had already been granted and therefore, this court cannot grant it for the second time. To do so is wastage of this courts time. The application is a clear proof of vexatious applications and indeed an abuse of court processes. I totally agree with Mdendemi, the learned State Attorney that this application should as I hereby do, be dismissed.

Application is accordingly dismissed with costs which shall be borne by the Advocate in person.

Order accordingly.




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