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

MISCELLANEOUS CAUSE NO. 29 OF 2022

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

BETWEEN

SALAAMAN HEALTH SERVICES .....APPLICANT

VERSUS

TANZANIA INSUARANCE REGURATORY AUTHORITY.....1ST RESPONDENT
THE ATTORNEY GENERAL..... 2ND RESPONDENT
BAGHAYO ABDALLAH SAQWARE..... 3RD RESPONDENT
ZAKARI MUYENGI..... 4TH RESPONDENT

RULING

22 & 31 Aug, 2022
MGETTA, J:

By way of chamber summons supported by an affidavit affirmed by one Aisha Rashid Mchome, the Principal officer of the applicant, the applicant, Salaaman Health Services, filed this application seeking for leave to apply for orders of certiorari and prohibition against Tanzania Insurance Regulatory Authority (henceforth the 1st respondent). Other respondents include the Attorney General (2nd respondent); Baghayo Abdallah Saqware (3rd respondent); and, Zakaria Muyengi (4th respondent). The chamber summons is made under **section 2(3) of the Judicature and Application of Laws Act Cap. 358**; **section 19 (1) and (3) of the Law Reform (Fatal Accidents and Miscellaneous**

Provisions) Act Cap 310; and, **Rule 5(1), (2), (5) and (6) and Rule 7 (1) and (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014**.

When the application was called on for hearing, Mr. Juma Nassoro, the learned advocate, appeared for the applicant; while, the 1st and 2nd respondents were represented by Deodatus Nyoni, the learned Principal State Attorney assisted by Mr. Okoka Mgavilenzi, the learned Senior State Attorney and Mr. Ayoub Sanga, the learned State Attorney; whereas, the 3rd and 4th respondents were represented by Mr. Mlyambelele Ng'weli, the learned Advocate.

Submitting for the application, Mr. Nassoro adopted the affidavit and the statement and continued to state that the applicant is seeking for order of certiorari to quash the decision of the 1st respondent contained in the letter attached to the affidavit as annexure "D", and for order of prohibition to restrain the 1st respondent from interfering with the business, affairs, autonomy, cohesion and rights of the applicant.

He firmly stressed on one ground to be satisfied by the applicant for a leave to apply for Judicial Review to be granted. Basing on paragraph 6 of the affidavit, he stated that the applicant has established that there is a prima facie case. He referred to annexure 'D', a letter which puts the

applicant on suspicious conduct in obtaining fundamental advantage against the insurance companies. Thus, he added, there is prima facie case which is sufficient for this court to grant the application sought as the content of the said application was not disputed.

He also referred to the case of **R V. Secretary of State for the Home Department ex parte Chedrack (1991) 2 All ER 319** in which Lord Dornad said at page 329 that if an arguable case is shown then leave is granted. In the case of **Birac International SA (Beureau Veritas [2006] 1 EA 26** it was held that if a prima facie case is established, then leave is granted.

In reply, Mr. Nyoni at the outset adopted the counter affidavits of all respondents. He insisted that the applicant is bound by its pleading and should be aware that paragraph 3 vii, viii and ix were expunged and this court has to disregard his submission from the bar. He stressed on this point by referring this court to the case of **NBC Ltd & Another Versus Bruno Vitus Swalo;** Civil Appeal No.331 of 2019 (CA)(Mbeya) (unreported) at page 17. He outlined the five principles to be met for the application for leave to be granted, that is; **one**, proof of existence of sufficient interest; **two,** existence of arguable case; **three,** existence of decision which is final; **four**, exhaustion of available remedy; and, **five**, the application has to be brought promptly. He insisted on compliance to

all the above conditions by referring to the case of **Cheavo Juma Mshana Versus Board of Trustees of Tanzania National Parks and Two Others;** Miscellaneous Civil Cause No.7 of 2020 (HC) (Moshi) (unreported) at page 7,8 and 9, and the case of **Emma Bayo Versus The Minister for Labour and Youths Development and others**, Civil Appeal No. 79 of 2012 (CA) (Arusha) (unreported) at page 8.

As regard to the 1st condition, he averred by referring to annexure 'D" to the effect that since the letter was confidential and not addressed to the applicant, the applicant cannot claim to have demonstrated any sufficient interest. He insisted that even in its affidavit, the applicant does not demonstrate sufficient interest.

With regard to the 2nd condition, he referred it as a gist of the application. It was his submission that for there to be an arguable case there must be decision which is final and annexed to the affidavit in support of the application. He insisted that paragraph 4 of the letter (annexure 'D') refers to it as a request letter. That the addressees were requested to do something and report to 1st respondent. Therefore, with that view he stressed that the letter by itself is not a decision, but a request.

The third condition was argued in line with the second condition. By insisting that there is no decision to be subjected for judicial review,

therefore this application is misconceived. Regarding the fourth condition he stressed that the applicant has not exhausted local remedies. He insisted that the applicant had an alternative remedy under **section 126(4) of the Insurance Act**. That is by filing an appeal by applicant to the Insurance Appeal Tribunal. He referred to the case of **John Mwombeki Byombalilwa Versus The Regional Commissioner And Regional Police Commander, Bukoba [1986] TLR 73** at page 88, the 3rd paragraph in which the court insisted that the applicant has to prove that there is no other available remedies before coming to this court seeking for prerogative orders. He also referred to the case of **Abadiah Selehe Versus Dodoma Wine Company Limited** [1990] TLR 113.

On the fifth condition, he conceded that it was brought within time, but he was of the view that the order of prohibition cannot be issued in this matter as there is no decision made as the insurance companies addressed in annexure "D" had not yet acted or responded to that letter. He added that even the order of prohibition could not be issued as there is no decision.

As an addition, Mr. Ayoub argued that there is no prima facie case as there is no decision. And the 1st respondent had power to act as it acted as it was in due course of executing its duties. He referred to the case of **R Versus Land Dispute** [2006] E.A 321.

Re-joining, Mr. Nassoro, apart from conceding with the five conditions necessary for the grant of leave, he insisted that the affidavit indicates interest of the applicant as the letter (annexure "D") which was not addressed to him and is confidential has put the applicant to suspicious conduct and has threatened the termination of its contract.

He insisted that the letter is a decision as it shows the intention of the 1st respondent which was to suspend or terminate the medical services of the applicant with other government institution. He stressed on his point by referring to the case of **Indo- Asian Estate Limited vs Authorised Officers and Others,** Miscellaneous Land Cause 43 of 2014.

With regard to alternative remedy, he responded that **section 126(4) of the Insurance Act** provides for the right of appeal to person aggrieved with the decision of the 1st respondent to appeal to the Appeal Tribunal, but after the decision is communicated in writing. That till this application was filed by the applicant, annexure 'D' was not communicated to the applicant in writing by the 1st respondent. Therefore, the applicant has no other remedy as the said right of appeal was curtailed. Hence this court is a proper forum for this application.

Having heard the contending arguments from both sides, I find it imperative before I go into depth of this application, to note at very

beginning that the essence of leave is among others to weed out hopeless cases at the earliest possible time, thus saving the precious time of the court, expenses to be incurred by the parties and avoiding public bodies being paralysed because of pending court action which might be unmeritorious. see the case of **Republic Versus Land Dispute Tribunal Court Division and Another** [2006]1 EA 321.

Further, I would like to put it very clear at this very early stage that while assessing the ingredients to satisfy this court to grant the prayer sought I will not go in depth of the materials submitted before this court being guided by the principle enumerated in the case of **Republic V Land Dispute Tribunal Court Central Division and Another** [2006] 1 EA 321, where it was held:

> *"....leave should be granted, if on the material available the court considers,* ***without going into the matter in depth****, that there is an arguable case for granting leave and that leave stage is a filter whose purpose is to weed out hopeless cases at earliest possible time, thus saving the pressure on the courts and needless expense for the applicant by allowing malicious and futile claims to be weeded out or eliminated so as to prevent public bodies being*

paralysed for months because of pending court action

which might turn out to be unmeritorious"

Therefore, spinning on the quotation above, referring to the pleadings availed to this court, I would stick on whether this application has met all necessary condition for this court to grant the leave.

It is worth to note that, for the application for leave to be meritorious all the conditions must be met. That through its affidavit the applicant must establish that has sufficient interest, arguable case, verification that there is no alternative remedies and promptness on filing the application.

Now on whether the applicant has sufficient interest on the matter, my traverse was on the pleadings before me. By considering paragraph 6 of the applicant's affidavit, I find that the applicant has established sufficient interest as it refers to the letter which request insurance companies to provide information which if are negatively recommended to the applicant, it will have negative impact to his business. That the letter is requesting information from insurance companies which might have the effect of suspending or terminating the services of the applicant. Hence affecting its interest on health service. Therefore, the 1st condition has been met.

With regard as to whether the applicant has established arguable case, I find the answer in the affirmative as a letter (annexure D) has triggered intention of the 1st respondent to terminate or suspend the business of the applicant. Therefore, the act of the 1st respondent writing to insurance companies requesting them to see the possibility of suspending or terminating any existing contracts and report to it or any other government authorities for them to take necessary action need to be checked through judicial review. With due respect, I will not deal with the issue whether the letter is or is not a decision as I will be tempted going into the merits of the application. And the same was discussed and finalised during the disposition of preliminary objection. Therefore, the 2nd condition has been met.

On whether the applicant has an alternative remedy, this was delt while disposing the preliminary objection in which it was answered in adverse. Bringing this issue again amounts to forcing this court to sit as an appellate court on its own decision, an act which I'm not ready to be dragged into and I won't venture my time on this point. Therefore, the 4th condition is met.

Now whether the application was promptly brought before this court, I find that the answer is in the affirmative. It is clear from records that the complained letter was written on 24th March, 2022 and this

application was filed on 28th day of June 2022. Therefore, the application was brought within the prescribed time limit of six months as per **Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014**. The argument of Mr. Nyoni that the application lacks decision therefore time limitation cannot be determined is a misconception as a letter activated the filing of this application bears the date of 24th March, 2022. It is from this date computation of time limit can start to count.

By and large, from the above finding, I find this application has merit. Leave to file judicial review is accordingly granted. No order as to costs.

It is so ordered.

Dated at **Dar es Salaam** this 31st day of August, 2022.

J.S. MGETTA

JUDGE