

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM
Miscellaneous Cause No. 31 of 2022**

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

AND

**IN THE MATTER OF THE DECISION OF THE PRESIDENT OF THE UNITED
REPUBLIC OF TANZANIA ON TERMINATION OF THE APPLICANT**

BETWEEN

DEMETRIA MELKIOR HYERA APPLICANT

AND

ATTORNEY GENERAL RESPONDENT

RULING

15/8/2022 and 2/9/2022

MZUNA, J.:

In this application **DEMETRIA MELKIOR HYERA**, the applicant herein, is seeking for leave to apply for:-

"Order of Certiorari to quash the decision of the President of the United Republic of Tanzania on termination of the applicant; Mandamus compelling the President of united Republic of Tanzania to reinstate the applicant as a Senior Curriculum Developer" AND Costs.

Brief facts as per the filed affidavit being that:- The applicant was employed by the Tanzania Institute of Education since 1st July 2009 as Curriculum Developer I-Kiswahili. She participated in reviewing English

Form 1 subject textbook and review of Tanzania Institute of Education Textbooks for Secondary School ordinary level and also part of experts comprising of six (6) members responsible to coordinate writing of English textbooks form I-IV.

The contents of the textbooks were validated by the Academic Committee of Council and then confirmed by the Tanzania Institute of Education Council, then submitted to the Commissioner who upon being satisfied with its quality and standard submitted to the Minister of Education, Science and Technology.

That after approval of the said books from the Minister, Tanzania Institute of Education started distribution of textbooks to Primary and Secondary schools all over Tanzania. It was then stopped not to be distributed after noticing that 44 textbooks contained editorial/typographical errors.

On 2nd May 2017 she was interdicted from performing all her official duties and function by the Acting Director on the ground that she coordinated writing of the three text books which contained a lot of editorial/typographical errors.

The disciplinary authority charged her for gross negligence in performing her duties after signing a dummy "sampuli kifani" which led to

mass production and thereby causing loss to the Tanzania institute of Education after the said books were withdrawn from being used at schools. On 18th September, 2018 she defended at the disciplinary hearing whereby the Council terminated her from employment on 17th October, 2018.

Her appeal both at the Public Service Commission and later to the President of the United Republic of Tanzania proved futile as the President upheld the findings of the Commission.

The main issue is whether this application for leave should be granted?

The application has been preferred 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) & (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules 2014.

Upon been served with the application and affidavit in support thereof, on 1st August, 2022, the learned State Attorney, Mr. Boaz A. Msoffe expressed his intention not to contest the application for leave. Additionally, the learned State Attorney had the view that issue on

determination of judicial review remedies on merits will be determined in the main application.

Submitting on the application, Mr. Richard Clement, the learned counsel for the applicant prayed to adopt the affidavit of the applicant and statement of facts to be part of his submission. The learned counsel said the applicant has sufficient interest in the case as she was an employee of Tanzania Institute of Education which terminated her. She lodged appeal to the Public Service Commission and later to the President of the United Republic of Tanzania who confirmed the termination. She was granted 14 days extension of time in Miscellaneous Application No. 9 of 2022 and filed this application.

He went on saying that there are triable issues which has been raised in the statement of facts. The grounds for leave are stated under paragraph 11 of the statement of facts. Since all the requirements are met and the respondent did not object it, he prayed for the same to be granted.

He touched as well on the date of filing by submitting that the application was filed electronically on 27/6/2022. That, under Rule 21(1) of the Electronic Filing Rules, 2018 the date of filing is that of submitting online hence the application is within time.

I have given due consideration to the submission by the counsel for the applicant. I have also taken a note that the application is not contested

In answering the above issue on merits or otherwise of the application, the first question to ask is, *was the application filed within time?* From the records, time to apply for judicial review of the decision of the President lapsed on 10th November, 2021. The applicant was granted 14 days leave to file this application out of time vides Miscellaneous Application No. 9 of 2022 annexed to the affidavit as DMH 13. It was issued on 21st June, 2022. The instant application was filed on line on 27/6/2022 at 15:47:35 and the documents were presented for filing in court on 5/7/2022 when the fee was paid. The law under *section 21(1)* of The Judicature and Application of the Laws (Electronic Filing) Rules of 2018 provides: -

"A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected".

Basing on the provision of the above cited rule, this application was rightly submitted when it was filed electronically on 27/6/2022 at 15:47:35.

Having answered the first point of filing that it was within time, the second point on whether *the applicant has interest* in the application is

also answered in the positive because before her termination, the applicant was an employee of the Tanzania Institute of Education.

This takes me to the last point *whether there is an arguable case*. Reading from the submission of Mr. Richard Clement, the learned counsel for the applicant, there are triable issues which have been raised in the statement of facts notably whether her termination followed the laid down procedure. My close looking on the pleadings specifically paragraphs 11, 12, 13 and 14 of both the affidavit as well as statement of facts, the applicant has demonstrated matters which calls for determination by this court in the judicial review. She alleges that she was not served with the charge sheet within time, that the council acted without jurisdiction to relieve her from duties, that the inquiry committee failed to properly evaluate the evidence submitted by both parties.

The above said conditions meet the criterion on grant of the orders sought as it was so held in the case of **Emma Bayo v. The Minister for Labour And Youths' Development and 2 Others**, Civil Appeal No. 79 of 2012 CAT (unreported) at page 8 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)

The above case restates three pre-requisite conditions to be satisfied before granting leave namely: 1. Existence of "*any arguable case*"; 2. That the application has been preferred "*within the six months limitation period*"; 3. That the applicant has "*sufficient interest*" in the matter.

Of course in an application for leave, the court looks on the application "*without examining the matter in any depth*" and then see whether "*there is an arguable case that the reliefs might be granted on the hearing of the substantive application*", see the case of **Njuguna V. Minister for Agriculture** [2000] 1 EA 184.

On account of the above, I find that this application is meritorious. Leave to file prerogative orders of *certiorari* and *mandamus* is hereby granted to the applicant with no order as to costs. It is hereby so ordered.




M. G. MZUNA,
JUDGE.
02/09/2022.