IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

(MISCELLANEOUS CAUSE NO. 30 OF 2022)

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND MANDAMUS

IN THE MATTER OF DISMISSAL FROM EMPLOYMENT OF ENGELBERT LUCAS CHELELE

BETWEEN

ENGELBERT LUCAS CHELELE.....APPLICANT

VERSUS

THE POLICE FORCE, IMMIGRATION AND
PRISON SERVICE COMMISSION.....1ST RESPONDENT
THE PERMANENT SECRETARY
MINISTRY OF HOME AFFAIRS.....2ND RESPONDENT
THE INSPECTOR GENERAL OF POLICE.....3RD RESPONDENT
THE ATTORNEY GENERAL.....4TH RESPONDENT

RULING

Date of Last Order: 21/09/2022

Date of Ruling: 12/10/2022

BEFORE: S.C. Moshi, J.

The application is made under rule 8 (1) (a) (b) and (2) of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review, Procedure and fees) Rules, 2014.

The applicant prays for the following orders: -

A. An order for certiorari quashing: -

i. Whole proceedings, judgement and findings of the military tribunal for being tainted with serious irregularities both of procedure and decision.

ii. Whole proceedings, judgement and findings of the military tribunal, for being very unreasonable that no reasonable authority could have reached to that decision.

iii. Whole proceedings, judgement and findings of the military tribunal for lack of reason by both not taking into account matters which ought to have been taken into account and taking into account matters which ought not to have been taken into account.

iv. Letter dated 14th day April, 2020 by the 1st respondent which terminated the applicant from employment without having jurisdiction to exercise such powers

v. Letters dated 14th day of April, 2020 by the 1st respondent and 15th day of May, 2020 by the 3rd respondent; while the former is the decision reached by the 1st respondent terminating the applicant from employment in Tanzania Police Force without any jurisdiction whatsoever to exercise such powers; the latter is the letter reached by the 3rd respondent informing the Applicant about the decision reached by the 1st respondent.

vi. Letter dated 26th day of October, 2021 by the second respondent upholding the decision of 1st respondent rendered on 14th day of April, 2020.

B. An order for mandamus compelling the 2nd respondent to reinstate the applicant from his employment in Tanzania Police Force without loss of remuneration and other entitlements from the whole period which he was out of employment as the decision terminating the applicant's employment was in total violation of the principles of natural justice and lack of jurisdiction by the 1st respondent.

C. Costs of this application.

D. Any other relief (s) which the honourable Court shall deem fit and just to grant in favour of the applicant.

The application was supported by applicant's affidavit and applicant's statement.

Undisputed factual back ground; the applicant was an employee of Tanzania Police Force since April, 2000 of the rank of Police constable with the highest rank reached that of Superintendent of Police (SP) stationed at Dar es salaam-Special Zone until 14th day of April, 2020 when his employment from Tanzania Police Force was terminated by the 1st Respondent. Prior to his employment being terminated, he was charged before the military tribunal for three offences. Before being charged and through a letter dated 31st day of March, 2016, he was required to defend himself and explain as to why disciplinary action should not be preferred against him. On 6th day of April,2016 he submitted his written explanation concerning the allegation levelled against him. After the conclusion of the disciplinary hearing, he continued to discharge his duties until 5th day May, 2020 when he was served with a letter by the 3rd respondent informing him that his employment in Tanzania Police Force has been terminated by the 1st respondent through a letter dated 14th day of April, 2020. The 1st

respondent through a letter dated 14th day April, 2020 terminated his employment from Tanzania Police Force and directed the 3rd respondent to communicate to him about the said termination. Acting on the instruction from the 1st respondent; the 3rd respondent through a letter dated 15th day of May, 2020 notified him about the decision of the 1st respondent. The applicant was aggrieved by the decision of 1st respondent; so, he lodged an appeal to the same organ which terminated his employment (i. e 1st respondent) through a letter dated 15th day of September, 2021. On 26th day of October 2021 he was served with a letter from the 2nd respondent through which he was informed that the 1st respondent had dismissed his appeal, he was aggrieved; hence he preferred the present application.

The genesis of the matter is shown at paragraph seven of the statement where the applicant stated as follows: -

A. Lack or excess of jurisdiction.

(i) *That, the 1st respondent had no jurisdiction whatsoever to terminate the Applicant from employment in the Tanzania Police Force as such power can only be exercised by the 2nd respondent; and if aggrieved by the decision of the 2nd respondent the applicant could lodge an appeal to the 1st respondent whereby in the present matter there was no termination done by the 2nd respondent hence the 1st respondent assumed powers which it did not have rendering its decision void ab initio.*

B. Violation of principles of Natural justice.

(i) The applicant was condemned unheard as he was not given a chance to examine documentary evidence used against him.

(ii) The whole of the proceedings before the military tribunal violated the principle of natural justice to the extent that the members who constituted the military tribunal played double role of being judges, complainant and at the same time as the prosecutors. Throughout the proceedings the complainant was the tribunal itself and the judges at the same time. The members who presided over the military tribunal even cross examined the applicant hence the military tribunal was not impartial.

C. That the decision arrived was not reasonable that no reasonable authority could ever have arrived into it.

(i) That the 1st respondent without any jurisdiction

(ii) *proceeded to terminate the applicant from Tanzania Police Force.*

D. Illegality of the procedures and decision.

(i) The military tribunal based its decision on different evidence and matters which were not adduced by the parties instead of basing its decision on the evidence that was adduced by the parties. Further the allegation levelled against the applicant was not proved to the standard required.

The application was disposed of by way of written submissions. The applicant was represented by Mr. Mwang'eza Mapembe, advocate

whereas the respondent was represented by Mr. Salehe Manoro, State Attorney.

The agreed issues arising from the chamber application, statement of facts and verifying affidavit are as follows: -

1. *Whether the 1st respondent had jurisdiction to terminate the applicant from the employment of Tanzania Police Force.*
2. *Whether the decision and conclusion reached by the military tribunal and confirmed by the 1st respondent was so unreasonable that no reasonable authority could have reached to that decision.*
3. *Whether the proceedings and decision of the military tribunal was tainted with serious illegalities and irregularities both of procedure and decision.*
4. *Whether the decision of the military tribunal had not taken into account matters which ought to have been taken into and taking into account matters which ought to have been taken into account.*
5. *Whether the applicant has made out his case for the orders of certiorari and mandamus to be issued.*

Mr. Mwang'eza Mapembe, herein referred also as Mr. Mapembe, commenced his submission by giving a brief back ground of the matter which I wish not to repeat here as the back ground facts have already been stated herein above, as well as in the statements and the affidavits.

Mr. Mapembe initiated his substantive part of his submission by quoting the case of **John Mwombeki Byombalilwa versus The Regional Police Commander** [1986] TLR 73 where it was observed that: -

"Judicial review is an important weapon in the hands of the

judges of this country by which an ordinary citizen can challenge an oppressive administrative action. And judicial review by means of prerogative orders (certiorari, prohibition and mandamus) is one of those effective ways employed to challenge administrative action".

On the first issue, he argued that, the first respondent (the police force Immigration and Prison Service Commission) had no jurisdiction to terminate the Applicant's employment as the power to do so is vested to the 2nd respondent (the permanent secretary ministry of home affairs) as per the law. He said that, the issue of jurisdiction is paramount in any proceedings, in this regard he cited **Stroud's Judicial Dictionary of Words and Phrases,** where the term jurisdiction is defined to mean;

"In the narrow and strict sense the jurisdiction of a validity constituted court connotes the limitations which are imposed upon its power seeking to avail themselves of its process by reference

1. *To the subject matter of the issue;*
2. *To the persons between whom the issue is joined; or*
3. *To the kind of reliefs sought or to any combination of these factors."*

He again cited the case of **NMB Bank plc versus The Dar Rapid Transit Agency;** Miscellaneous commercial Application No. 69 of 2018 which was quoted with approval by the Court of Appeal of Tanzania in the case of **Emmanuel Martin N'gunda versus Herman Mantiri Ng'unda and 20 others;** Civil Appeal No 8 of 1995. He argued that, although, the justice of appeal was discussing the jurisdiction of the court

but this also extended to the jurisdiction of quasi-judicial bodies and those officers with quasi- judicial duty to make decisions. He said that, in this regard the court held that;

> *"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature. The question of jurisdiction is so fundamental that the courts must as a matter of practice on the face of it be certain and assured of their jurisdiction position at the commencement of the trial. It is risky and unsafe for the court to proceed with the trial of a case on the assumption that the trial court has jurisdiction to adjudicate upon the case"*

He contended that; it is not disputed that the applicant's employment was terminated by the 1st respondent per annexure LLA-1 which is a letter which was signed by General Secretary of the 1st Respondent as written at paragraph 3 (three) that;

> *"Kwa mamlaka iliyonayo Tume chini ya kifungu cha 7 (3) cha sheria ya Jeshi la Polisi, Uhamiaji, na Magereza sura ya 241 kama ilivyofanyiwa Marekebisho na sheria Na. 8 ya uhamiaji ya mwaka 2015 kikisomwa Pamoja na kanuni C. 3 (3) ya kanuni za Jeshi la Polisi za mwaka 1995 kama ilivyofanyiwa marekebisho na GN Na. 406/2013, umefukuzwa kazi kuanzia tarehe 9 April,2020."*

He said that, in this application part IV of the Police Force service Regulations, 1995 titled "DISCIPLINE" is relevant. This part provides and elaborates the procedure of handling disciplinary proceedings involving a police officer of the rank of Assistant Inspector to the rank of Assistant Commissioner as follows;

C.3 (1) Subject to the provisions of section 7 (3) of the police Force service Commission Act, the disciplinary authority in case of any police officer of the rank of Assistant Inspector to the rank of Assistant Commissioner shall be the Inspector General, and the final disciplinary authority is vested in the commission.

2)...N/A

(3) Where the inspector General is of the opinion that the gravity of any charge which is found to have been proved warrants the infliction of any of the following punishments: -

a) Dismissal;

b) Or Termination of appointment otherwise than by dismissal;

c) Reduction in rank; or

d) Reduction of salary.

He shall not determine the punishment to be inflicted but shall submit to the Permanent Secretary a report on the investigation of the charge together with details of any matters which in his opinion aggravate alleviate the gravity of the case.

(4) Where a report is submitted by the Inspector General under this regulation, the permanent Secretary shall consider the report and;

(a)... N/A

(b) Shall, after considering any further report, determine the punishment, if any to be inflicted and inform the accused officer such determination.

He argued that; reading through the foregoing provisions of Regulation C.3 (1), (3) (a) and (4) (b) of the Police Force Service Regulations, 1995 it is clear that the disciplinary authority in case of any Police Officer of the rank of Assistant Inspector to the rank of Assistant Commissioner (the applicant inclusive as he was a Superintendent of Police) is vested to the Inspector General of Police (3rd respondent). However, when a particular police officer is charged and found guilty with the offence and the punishment proposed is that of dismissal, as in the case at hand, the Inspector General of Police shall cease to have jurisdiction and shall not determine the punishment to be inflicted to the police officer. What the Inspector General of police has to do as per the cited law above is to submit a report on the investigation of the charge together with other details of the matters which in his opinion aggravate or alleviate the gravity of the case to the permanent Secretary Ministry of Home Affairs (2nd Respondent).

Therefore, where a report is submitted by the inspector General of Police (3rd Respondent) to the permanent Secretary of home affairs (second respondent) The permanent secretary of Home Affairs shall consider the report and determine the punishment, if any, to be inflicted and inform the accused police officer of such determination. He contended that, from the dictates of the law quoted herein above, the 1st Respondent (Police Force, Immigration and Prison Services Commission) had no jurisdiction to terminate the applicant's employment. The proper authority to dismiss the applicant from the employment was permanent secretary Ministry of home Affairs (2nd Respondent).

In support of his argument, he cited the case of **Lameck Richard Rweyongeza versus The police Force, Immigration and Prison**

Service Commission & 3 Others; High court of Tanzania at Dares salaam in Miscellaneous Cause No. 25 of 2021 in which case the application of Regulation C. 3 (1) (a) and 4 (b) of the Police Force Service Regulations, 1995 was discussed. In this case the Judge, J.S. Mgetta said that: -

> *"From the above quoted provisions of the law, it is crystal clear that in the present application, the disciplinary authority in respect to the applicant is vested to the inspector General of Police, the 3rd respondent. But since the applicant was charged with and found guilty of disciplinary offences and the punishment proposed was that of dismissal of his employment, the 3rd respondent ceased to have such power and could not proceed to inflict such punishment to the applicant. After receiving the report of investigation of the charge from the military tribunal, his duty was to submit it to the 2nd respondent and not to the first respondent, together with other details of the matter which in his opinion aggravate or alleviate the gravity of the case".*

The Judge elaborated further that;

> *"In turn, upon receipt of the report, the 2nd respondent could have considered the report and determine disciplinary punishment and proceeded to inflict it upon the applicant, and thereafter inform him of such decision. This is what ought to have been done in respect to the applicant in his application."*

He said that, the inspector General of police had wrongly sent the military tribunal's proceedings to the 1st Respondent who without any

jurisdiction whatsoever terminated the applicant from Tanzania Police Force. The inspector General of Police (3rd respondent) did not act in accordance with the law (Regulation C. (1), (3) (a), (b), (c), (d) and (4) (4) of the Police Service Regulations, 1995) by submitting a report to the first Respondent contrary to the law and the first respondent without considering and assuring herself whether she had such mandate or not went further step and illegally dismissed the Applicant from employment. He prayed the court to find that the 1st Respondent had no jurisdiction to dismiss the Applicant, hence the decision was not but null and void. In this regard he cited the case of **Elizabeth Ndambala Vrs. The Police Force Immigration, and Prisons Service Commission & 2 Others;** High court of Tanzania at Dar es salaam in Miscellaneous Cause No. 39 of 2020, where the court held inter alia that: -

> *"The excess of Jurisdiction, in my humble opinion, was a result of material violation of the procedure which was apparent and self- explanatory under regulation C. 6 of the Police Force Service Regulation, 1995."*

He argued further that, the act of the first Respondent to hijack the proceedings and terminate the Applicant from employment denied him an opportunity to have his appeal against the decision of the 2nd Respondent, the proper authority as per the law, being heard and determined by it, as it is the appellate body with authority to dismiss the applicant from employment as provided for under Regulation C. 3 (4), (b) of the police Force Service Regulations, 1995.The act of the 1st Respondent to hijack and proceed to terminate the applicant from employment was illegal, as the 1st respondent is an appellate body of the second respondent. All

appeals against the decision of the 2nd respondent are lodged to the 1st respondent as per Regulation 41 (1) of the Police Force, Immigration and Prisons Service Commission Regulations, GN NO. 438 of 2015, which provides: -

> *"Any officer of the rank of Assistant Inspector up to and including that of Assistant Commissioner aggrieved by a penalty imposed against him by or confirmed by the Commissioner General or the permanent Secretary as the case may be such decision may within seven days of the notification to him, appeal in writing against to the commission."*

He said that, under Regulation 41 (1) of the Police Force Immigration and Prisons Service Commission (Immigration Service Administration) Regulations, 2015 GN NO.438 it is crystal clear that the jurisdiction to terminate the applicant from his employment was vested to the permanent Secretary Ministry of Home Affairs (the 2nd Respondent) and if the Applicant is aggrieved by the decision of the 2nd Respondent, he had a right to prefer his appeal within seven (7) days to the 1st Respondent. Without jurisdiction, the first respondent (The police Force, Immigration and Prisons Service Commission) (An appellate body of the 2nd respondent) hijacked the proceedings, process and powers vested to the 2nd respondent in dealing with the records of inquiry with its finding and recommendation after receiving the same from the Inspector General of Police and proceeded to terminate the applicant from employment. Henceforth the act of the first respondent to hijack the process and writing a letter to the applicant and terminate him from his employment was illegal as he had no such power at first instance because the same is vested to the 2nd respondent only. He referred to the case of **Lameck**

Richard Rweyongenza (Supra) at page 8-9 where the court said that:

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> *"...this is so because in law neither the military tribunal, the first respondent nor the 3rd respondent has any power to dismiss the applicant from employment..... the 1st respondent is taken to have exceeded or dismissed the applicant from employment without any power whatsoever. As correctly submitted by Mr. Mwang'eza, the 1st respondent hijacked disciplinary power vested upon the 2nd respondent at the first instance. The power of the 1st respondent is at appellate level and his decision is final and conclusive as provided for under section 7 (3) 0f the Police Force and Prison Services Commission Act, 1990.....Thus, the 1st respondent decision of 31/5/2021 amounted to illegality and therefore void ab initio as I have found elsewhere herein. By hijacking the power of the 2nd respondent and proceeded to dismiss the applicant from employment, obviously the 1st respondent denied the applicant the right to appeal to it. In short, the 1st respondent is above the 2nd respondent in disciplinary punishment imposition. On this aspect, his power is at appellate level over the 2nd respondent's decision as per regulation C. 3 (1) of the Regulations and section & (3) of the Act quoted herein, which provide inter alia that in respect of this matter; the final disciplinary authority is vested in the commission, the 1st respondent in the sense that in case the applicant was aggrieved by the decision of the 2nd respondent, he could have the right to appeal within seven days to the 1st respondent."*

He again cited the case of **Kevin Peter Makaranga Versus The Police Force, Immigration and Prison Service Commission and 2 Others,**

Miscellaneous Cause No. 7 0f 2021; HC of Tanzania at Dar es salaam, p.5 where the court held that:-

> *".....From the record the decision to terminate the Appellant (sic) was made by the Police Force Immigration and Prison Service Commission (1st Respondent) as per Annexure LL1 to the Applicant's affidavit, which by virtue of Regulations C. 3 (1) is final authority. The said commission is only entitled to entertain an appeal challenging the decision."*

He argued that, an administrative body is required to act in accordance with the law and failure to do so, judicial review will come into play as an important weapon in the hands of the Judges of this country by which an ordinary citizen can challenge an oppressive administrative action. He referred to the case of **Jama Yusuph vrs. Minister for Home Affairs** [1990] TLR 80 the court observed that: -

> *"If an administrative authority is acting within its jurisdiction or introverts, and no appeal from it is provided by statute, then it is immune from control by a court of law. But if it exceeds its power, or abuses them so as to exceed them, a court of law can quash its decision and declare it to be legally invalid."*

He ended his submission in chief by urging the court to find that, the 1st respondent acted ultra vires, therefore he prayed the court to quash the impugned decision and declare such decision legally invalid, he again referred to the case of **Lameck Richard Rweyongeza** (supra) at p. 12 where the court had this to say: -

> *"Finally, I find that the decision to dismiss the applicant from employment was not only made without or in excess of jurisdiction*

to do so but also denied him forum to lodge an appeal against the 2nd respondent's decision, if at all, would have been made and the applicant aggrieved by it. This ground of lack of access alone is enough to dispose of this application without considering the remaining grounds."

He argued the 2nd, 3rd and 4th issues together, i.e., whether the decision and conclusion reached by the military tribunal and confirmed by the 1st respondent was so unreasonable that no reasonable authority could have reached to that decision, whether the proceedings and decision of the military tribunal was tainted with serious illegalities and irregularities both of procedure and decision, and whether the decision of the military tribunal had not taken into account matters which ought to have been taken into and taking into account matters which ought to have been taken into account; he said that, these issues cannot be determined without having the proceedings of the military tribunal records. He said that, the applicant challenges the procedures during the hearing of his case claiming that they were tainted with serious illegalities and irregularities and further that the decision reached by the military tribunal was so unreasonable that no reasonable authority could have reached to that decision and in reaching the final verdict, the military tribunal had not taken into account matters which ought to have been taken into account and taking into account matters which ought to have taken into account. He said that, these matters cannot be argued and be determined without Having the proceedings of the military tribunal records. As can be seen through paragraph 10 of the applicant's affidavit, the applicant through a letter dated 01st day of June, 2020 wrote a letter requesting to be supplied with the said proceedings but the 3rd respondent rejected the prayer. The

3rd respondent responded to the applicant through a letter dated 03rd day of August, 2020 and stated that the Tanzania Police Force has no such procedure to its police officers.

He argued further that, the proceedings are within the reach of the respondents and the same has not been brought before this court by the respondents without sufficient reason being shown. Henceforth, they call upon this court to draw adverse inference against the respondents that if such proceedings were to be brought before the court, the proceedings would have proven against the interests of the respondents. He stressed that, those proceedings are very material to the present case; in this respect he cited the case of **Zein Enterprises Limited Vrs. Mazengo Trading Company Limited,** High court of Tanzania, Land case No. 20 of 2013 in which case the court said thus:

> *"A similar position was pronounced in Kimotho vs. Kenya Commercial Bank [2003] E.A.1. It appears to me that, the principle set out in the above authorities is not limited to failure to call witnesses, but extends to failure to produce relevant documentary evidence."*

He contended that, they are certain that in case the respondent had made available the said military tribunal's proceedings before this court it will prove that there were serious illegalities and irregularities of procedures, the decision reached by the military tribunal was so unreasonable that no reasonable authority could have reached to that decision and in reaching the final verdict and the military tribunal had not taken into account matters which ought to have been taken into account.

On the 5th issue, which is last issue, whether the applicant has made out his case for the order of certiorari and mandamus to be issued. He said that, an order of mandamus is issued by the High Court, tribunal or to an officer with quasi-judicial duty to perform mandatory or purely ministerial duty. The conditions under which the order of mandamus may be ordered were discussed in the case of **Sanai Murumbe and Another Vrs. Muhere Chacha** [1990] T.L.R. 54 where the Court of Appeal Tanzania held that: -

I. *An order of certiorari is one issued by the High Court to quash the proceedings of and decision of subordinate court or tribunal or authority where among others, there is no right to appeal.*

II. *The High Court is entitled to investigate the proceedings of a lower court or tribunal or public authority on any of the following grounds apparent on the record:*

   (a) *Taking into matters which it ought not to have taken into account.*

   (b) *Not taking into account matters which it ought to have taken into account;*

   (c) *Lack or excess of jurisdiction*

   (d) *Conclusion arrived at is so unreasonable that no reasonable authority could ever come to it.*

   (e) *Rules of natural justice have been violated;*

   (f) *Illegality of procedure or decision.*

He said that, from the above quoted decision, the crux of the present application is on the grounds of excess of jurisdiction, violation of the principles of natural justice, unreasonableness and illegality of the procedures adopted and the decision reached. Therefore, since the applicant was terminated from the Police Force by the 1st respondent without having jurisdiction to do so as discussed herein above, he was of the view that the applicant has made out his case for this court to issue an order of certiorari quashing the decision of the first respondent and further granting the prayer for an order of mandamus compelling the 2nd respondent to reinstate the Applicant from his employment within Tanzania Police Force to the rank that he was and without loss of remuneration and other entitlements for the whole period that he was out of the employment because of the illegalities pointed out herein above.

On the other hand, Mr. Salehe Manoro, responded among other things that, during hearing of the military tribunal, the applicant was given all his rights, including a right to be represented with an advocate, a right to choose a prosecutor, a right to examine, a right to make copy of any document produced as evidence against him and a right to call witnesses. After the conclusion of the hearing the applicant was found guilty with all three offences and the case was forwarded to the commission for further action, this is because the power of the military tribunal ends there. Regulation 24 (2) of the police Force Immigration and prisons Services Commission (Immigration service (Administration) Regulations 2015, provides that disciplinary powers in respect of an officer of the rank from Assistant Inspector to Assistant commissioner shall be vested in the commission.

He stated that, the commission found the applicant guilty with all the offences and through the power vested on him under Regulation 6 (d) of the Police Force Immigration and Prisons Service Commission (Immigration Service (Administration) Regulation 2015 and Regulation C. 3. (3) (a) of the police Force Regulations 1995 as amended by GN No. 406/2013 terminated the applicant from employment, through a letter dated 14th day of April 2020 with reference No. titled KUFUKUZWA KAZI, through which the applicant was informed his rights including a right to appeal.

He contended that, the respondents followed all the procedures and the applicant was given all his rights during tribunal and commission proceeding before he was terminated. The whole proceeding, judgement, findings and decision of the military Tribunal and Commission was legal and reasonable that any authority could have reached to that decision. The 1st respondent acted on his powers given under Regulation 6 (d) of Police Force Immigration and Prisons Services Commission (Immigration Service (Administration) Regulations 2015 Regulation C.3 (3) (a) of the Police Force Service Regulations 1995 as amended by GN No. 406/2013.

He then tackled the issues, on the first issue he argued that, the first respondent (The Police Force Immigration and Prison services Commission) had jurisdiction to terminate the applicant's employment, is vested with such power by Regulation 6 (d) of the Police Force immigration and Prison Service Commission (Immigration Service (Administration) Regulations 1995 as amended by GN No. 406/2013, Regulation 6 which provides on power of the commission as follows;

(a) Appoint

(b) Promote

(c) Confirm appointment; and

(d) Terminate

He ended his submission on the first issue by saying that, the disciplinary authority in case of any Police of the rank of an Assistant Inspector to the rank of Assistant Commissioner is vested to the Police Force, Immigration and Prisons Services Commission.

He argued the second, third and fifth issue together, and he said that, respondents followed all procedures and the applicant was given all his rights during tribunal and commission proceeding before he was terminated. The whole proceeding, judgment, finding and decision of the military tribunal and commission was legal and reasonable that any authority could have reached to that decision. For example, Regulation 15 (1) of the Police Force Service Regulations 1995 as amended by GN No. 406/2013, provide for inquiring procedure of which the commission has to observe.

On the last issue, whether the applicant has made out his case for orders of certiorari and mandamus to be issued. He submitted that, the applicant has failed to make out his case as the police Force, Immigration and Prison services commission before terminating him took all necessary steps to make sure that they have reached to a reasonable decision without infringing applicant's right.

In rejoinder, Mr. Mwang'eza Mapembe reiterated his submission in chief, and contended further that, the essence of the 1st respondent being the final authority as per section 7 (3) of the Police Force and Prisons Service

Commission (Immigration Service (Administration) Regulation, 2015 is found under regulation, 41 (1) of the Police Force, Immigration and Prisons Services Commission (Immigration Service (Administration) Regulation, 2015 GN No. 438, is that, in case the applicant is aggrieved by the decision of the 2nd respondent, the applicant could have a right to refer his appeal within seven (7) days to the 1st respondent. Therefore, the act of the first respondent to hijack the process by writing a letter to the applicant and terminating him from employment was illegal as the 1st respondent had no such jurisdiction at first instance because the same is vested to the 2nd respondent only. In this respect, he again cited the case of **Elizabeth Ndambara and Kevin Makaranga** (Supra). He reiterated his prayer that this court find that the 1st respondent acted ultra vires and thereafter quash the said decision and reinstate the applicant from his employment; also, that the court issue an order of mandamus as prayed.

Having carefully taken into consideration the factual back ground, pleadings and submissions, I will now go to the issues, starting with the first issue, that is; whether the 1st Respondent had jurisdiction to terminate the applicant from the employment in Tanzania Police Force.

Disciplinary procedure for a police officer of applicant's rank, is provided for, inter alia, by the following laws: -

(1) Section 7 (3) of the Police Force and Prison Service Act, 1990 which provides that;

> *The final disciplinary authority in respect of the officers of the rank of Assistant Inspector to the rank of Assistant commissioner is vested in the commission.*

(2) The police Force, Immigration and Prisons services Commission (Immigration Service (Administration) Regulation, 2015 GN No. 438; regulation 24 which

reads thus:

> *The disciplinary powers in respect of an officer of the rank from Assistant Inspector to Assistant Commissioner shall be vested in the commission.*

Whereas Reg. 41 (1) provides that were the penalty is imposed by the Permanent Secretary, such decision is appealable to commission within 7 days.

(3) Part iv Regulation C. 3 of the Police Force Service Regulations, 1995 provides that;

1. *Subject to provisions of section 7 (3) of the Police Force and Prisons Service Commission Act, the disciplinary authority in case of any police officer of the rank of Assistant Inspector to the rank of Assistant Commissioner shall be the Inspector General, and the final disciplinary authority is vested in the commission.*
2. *N/A...*
3. *Where the Inspector General is of the opinion that the gravity of any charge which is found to have been proved warrants the infliction of any of the following punishments;*
    a. *Dismissal; or*
    b. *Termination of appointment otherwise than dismissal; or*

c. Reduction in rank; or

d. Reduction in salary,

He shall not determine the punishment to be inflicted but shall submit to the permanent secretary a report on the investigation of the charge together with details of any matters which in his opinion aggravate or alleviate the gravity of the case.

4. Where a report is submitted by the inspector General under this regulation, the permanent secretary shall consider the report and;

a. N/A....

b. Shall after considering any further report, determine the punishment, if any to be inflicted and inform the accused officer of such determination.

Therefore, reading through the law, it is obvious, as submitted by applicant's advocate herein above that the disciplinary authority in case of any police officer of the rank of Assistant Inspector to the rank of Assistant Commissioner, the applicant inclusive, is vested on the Inspector General of Police. The law mandates that, where a particular officer is charged and found guilty of the offence and the punishment proposed is that of dismissal, the Inspector General of Police shall cease to have jurisdiction and shall not determine the punishment. The Inspector General of Police is required to submit a report on the investigation of the charge together with other details of the matter which in his opinion aggravates or alleviates the gravity of the case to the permanent secretary, Ministry of

Home affairs (The 2nd respondent). Where a report is submitted by the Inspector General of Police (Third Respondent); the permanent Secretary Ministry of Home affairs shall consider the report and determine the punishment to be inflicted and inform the accused police officer of such determination.

Again, in view of section 7 (3) of the Police Force and Prisons Service Act, and Regulation, 41 (1) of the Police Force, Immigration and Prisons Services Commission (Immigration Service (Administration) Regulation, 2015 GN No. 438 the 1st respondent is the final authority due to the fact that if the applicant was aggrieved by the decision of the 2nd respondent, the applicant could have a right to refer his appeal within seven (7) days to the 1st respondent.

It is evident therefore, that the first respondent acted ultra vires, he wrote a letter to the applicant and terminated him from employment as she had no first instance jurisdiction because the jurisdiction to terminate applicant's employment is vested on the 2nd respondent only. See similar cases of **Lameck Richard Rweyongeza versus The Police Force, Immigration and Prison Service Commission & 3 Others** (Supra) and **Elizabeth Ndambala versus The Police Force Immigration and Prison Service Commission & 2 Others** (Supra).

It is also obvious that, the act of first respondent to terminate the applicant from employment denied the applicant to have his appeal against the decision of the second respondent. In a similar case **of Lameck Richard Rweyongeza** (Supra) the court had this to say:

"Finally, I find that the decision to dismiss the applicant from employment was not only made without or in excess of jurisdiction to do so but also denied him a forum to lodge an appeal against the second respondent's decision....."

I again agree with applicant's advocate submission in respect of the second, third and fourth issue, the respondent's conduct of failing to supply the applicant with the proceeding and failure to attach the same to the counter claim, prejudiced the applicant. It is obvious that he cannot argue his case in respect of 2nd, 3rd and 4th issues, to show whether the respondents followed the procedures in terminating applicant's employment. In this regard the case of **Zein Entrprises Limited Vrs. Mazengo Trading Company Limited** (Supra) is relevant.

For instance, the following complaints cannot be determined in absence of inquiry proceeding and decision:

"The whole of the proceedings before the military tribunal violated the principle of natural justice to the extent that the members who constituted the military tribunal played double role of being judges, complainant and at the same time as the prosecutors. Throughout the proceedings the complainant was the tribunal itself and the judges at the same time. The members who presided over the military tribunal even cross examined the applicant hence the military tribunal was not impartial."

Similarly, the following paragraph cannot be ascertained: -

"B. Violation of The Principle of Natural Justice.

THAT, the contents of Paragraphs & (B)(i) (ii) of the Applicant's statements are disputed and;

(i) The respondents aver that the applicant was served with charges against him and even given a chance to examine documentary evidence.

(ii) The respondents aver that the Military Tribunal was constituted in accordance with the provision of regulation C. 6 (2) and (3) of the Police Force Service Regulation of 1995 as amended by GN 406 of 2013.

The said Regulation mandate Inspector General of Police to appoint investigators for the purpose of collecting evidence and its roles end up with proposing punishment which has to be imposed by another entity."

Strangely, the respondents didn't give explanation for their failure to supply the applicant with the proceedings so he could make up his case; this is evidenced in the counter affidavit, reply statement and in their reply submission. Indeed, failure to discharge their duty to bring this evidence to dispute applicant's claim, presupposes that had they brought it, the evidence could be in favour of the applicant, and it infers that it would have been contrary to respondent's interest, see **Zein Enterprises Limited (Supra).** Having said that, I am inclined to answer all three issues in favour of the applicant.

Finally, the last issue, whether the applicant has made out his case for the orders of certiorari and mandamus. These are prerogative orders; however, they are two separate and distinct orders with different effects obtained through an application for judicial review, these have their scope,

they are not substitute of an appeal. Applicant's advocate submitted that the applicant has made up a case for this court to issue an order of mandamus, and in support of his argument he cited the case of Sanai **Murumbe and Another Vrs. Muhere Chacha** (Supra); with due respect to the counsel, it is evident that he has misconstrued the court's holding because in the cited case, the Court of Appeal of Tanzania dealt with a situation where the court may issue an order of certiorari. Therefore, applicant's advocate's submission is misconceived; the court did not discuss conditions pertaining to issuing an order of mandamus as suggested by applicant's counsel. The court held inter alia that: -

> *"An order of certiorari is one issued by the High Court to quash the proceedings of and decision of subordinate court or tribunal or authority where among others, there is no right to appeal.*
>
> *The High Court is entitled to investigate the proceedings of a lower court or tribunal or public authority on any of the following grounds apparent on the record:*
>
> *a) Taking into matters which it ought not to have taken into account.*
>
> *b) Not taking into account matters which it ought to have taken into account;*
>
> *c) Lack or excess of jurisdiction*
>
> *d) Conclusion arrived at is so unreasonable that no reasonable authority could ever come to it.*
>
> *e) Rules of natural justice have been violated;*

(K) Illegality of procedure or decision."

Basing on the discussion herein above, I find that an order of certiorari as prayed in prayer 'A' is maintainable in view of the fact: *one*; the 1st respondent acted in excess of its authority for want of jurisdiction to terminate the applicant. *Two*; Illegality of the decision; the procedure leading to the decision is vitiated by illegal procedure adopted by the third respondent for submitting the inquiry record to 1st respondent, and the first respondent acting on it. *Three;* failure to observe the principles of natural justice for failure to afford the applicant with a fair hearing i.e., the appellate authority, the commission (First respondent) hijacking powers of the permanent secretary (The 2nd respondent) who is empowered to inflict a punishment of termination at first instance and for 3rd respondent's failure to supply the applicant with inquiry record.

As regards a prayer for an order of mandamus; it is important to point out that an order for mandamus is issued when the relevant authority has failed to perform its duty, and it is defined by **Wikipedia online free dictionary** as follows: -

> "(we command") is a judicial remedy in the form of an order from a court[1] to any government, subordinate court, corporation, or public authority, to do (or forbear from doing) some specific act which that body is obliged under law to do (or refrain from doing), and which is in the nature of public duty, and in certain cases one of a statutory duty. It cannot be issued to compel an authority to do something against statutory provision. **For example, it cannot be used to force a lower court to take a specific action on applications that have been made, but if the court refuses to rule one**

way or the other then a mandamus can be used to order the court to rule on the applications."[Emphasis supplied].

Therefore, a person can be said to be aggrieved only when he is denied a legal right by someone who has a legal duty to do something and abstains from doing it.

It is therefore my view that, a relief for an order of mandamus as prayed by the applicant in prayer 'B' of the chamber summons is not maintainable for the reason that for this court to compel the respondent to reinstate the applicant to his employment post without loss of remuneration and other entitlement would be tantamount to stepping into the shoes of the authority which is required by law to do i.e., forcing the respondents to take specific action on the application which the respondents are supposed to hear and determine in case they would wish to pursue disciplinary process afresh.

That said and done, I grant an order for certiorari as prayed, let it be issued accordingly.

In fin, before penning off, again it is necessary to point out that, having quashed the whole process, the inquiry and decision, it entails that the status of applicant's employment reverts back to where it was before the applicant was charged with disciplinary offences.

It is so ordered.

S.C. MOSHI

JUDGE

12/10/2022