

IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 46 OF 2022

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
AN ORDER OF CERTIORARI, MANDAMUS, AND PROHIBITION
AGAINST THE RESPONDENTS**

AND

**IN THE MATTER OF CHALLENGING THE DECISION OF THE
PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA FOR THE
TERMINATION OF EMPLOYMENT OF JONAS JOSEPH TILLYA**

BETWEEN

JONAS JOSEPH TILLYA.....APPLICANT

VERSUS

THE CHIEF SECRETARY.....1ST RESPONDENT

BOARD OF GOVERNORS, INSTITUTE

OF SOCIAL WORK.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

Date of Last Order: 03/11/2022

Date of Ruling: 24/11/2022

BEFORE: S.C. MOSHI, J

The respondent took objection to the application for leave to file an application for certiorari and mandamus on the ground that:

"The application for leave is incompetent for failure to follow court orders dated 15th September, 2022."

The gist of the objection is that, the amendments in the amended chamber summons are beyond court's order.

At the hearing of the application the respondents were represented by Ms. Narindwa, State Attorney whereas the applicant was represented by Mr. Tasinga, advocate. Ms Narindwa submitted among other things that, on 15/9/2022 the matter came for mention, the applicant requested and prayed for amendment of the chamber summons to implead the 1st respondent to be Chief Secretary instead of the President of the United Republic of Tanzania. The court granted the order, it allowed the applicant to file an amended chamber summons with supplementary affidavit.

The amended chamber summons added Section 2 (1) of the Judicature and Application of laws Act, section 19 (2) of the Law reform (Fatal accidents and Miscellaneous provisions) Act, [Cap. 310 R.E 2002], R. 5(3) of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 and Section 95 of the Civil Procedure Code. Ms. Narindwa contended that, all these were not cited in the initial Chamber Summons.

She also pointed out that, in the new statement, he prayed for reliefs which were not pleaded in the initial statement; she pointed out relief 5(a). She again said that, the affidavit also contains new facts in Paragraphs No.

4.5.9,10,13,16(a) and 16(c); all these were not in the initial affidavit. Likewise, she pointed out that the grounds in the statement are different. While the initial one had two grounds (i) and (ii), the new one has 5 grounds a (i), (ii), (iii), (b) and (c).

She argued that, these are not amendments, the applicant has brought up a new chamber summons. They brought in new facts beyond what was ordered by court. She said that, this is contrary to law. She referred to the case of **Omesmo Nangole vs. Dr. Steven Lemomo Kiruswa & 2 others**, Court of Appeal, Civil Appeal No. 129/2016, page 9.

She lastly prayed that the application be struck out with costs.

Mr. Tassinga assailed the status of the preliminary objection, that it's not worthy to be referred to as a preliminary objection. He said that, a preliminary objection must be hinged on a specific point of Law and not otherwise. He contended that, that the case of **Onesmo Nangole** (supra) is distinguishable from the present case in different aspects: -

1. It was dealing with an appeal. In this court we are dealing with Misc. Application. They are two different court actions which can't be considered in a like manner.
2. In the court of appeal decision, the amendment was very specific, this is seen at P.5.

He contended that, the practice, of not specifying a specific point of law was condemned by the Court of Appeal, he referred to the case of **James Burchard Rugemalila vs. Republic & another**, Cr. Application No. 59/19 of 2017 at page11 and 12.

He said that in this case, the applicant was granted general amendment, so he was supposed to abide with court orders and that's what he did.

I have considered both sides submissions and the relevant laws. I at the outset agree with Ms Narindwa's submission for the reasons which will be shown herein after.

Evidently, the applicant's advocate does not dispute that the amendments were done beyond court's orders. In this regard, the case of **Onesmo Nangole** (supra) is relevant. The prayer was specific, the court allowed the applicant specifically to amend the chamber summons by impleading the Chief Secretary instead of the President. He was also allowed to file a supplementary affidavit. I reproduce the proceedings hereunder: -

15/09/2022

Coram: Hon. S.C. Moshi, J

For the Applicant: The Applicant is present Isack Tasinga, Advocate for Applicant

<i>For the 1st Respondent</i>	} <i>Mr. Nicholaus Mayunga, advocate for 2nd and holding brief for Attorney General who's 3rd respondent</i>
<i>For the 2nd Respondent</i>	
<i>For the 3rd Respondent</i>	

CC: M.G. Kanyagha

Mr. Tasinga:

We have served notice to all parties.

However, I have noted that for the 1st respondent I was to put the name of the Chief Secretary instead of the President; I also pray to file a supplementary affidavit.

Mr. Nicholas: *We have no objection.*

Court: *Prayer is granted.*

Order:

- 1. Mention on 6/10/2022 at 9.00 am for necessary orders.*
- 2. Amended chamber summons to be filed by 22/9/2022*
- 3. Counter affidavit to be filed by 29/9/2022*
- 4. Reply to counter affidavit if any to be filed by 3/10/2022*

S.C. Moshi

Judge

15/9/2022

The case of **James Burchard Rugemalila vs. Republic & another** is distinguishable as the applicant applied for bail pending determination of his appeal, the applicant cited some irrelevant rules, the court ignored the wrong citation. In the case at hand, the applicant's advocate made a specific prayer to amend the chamber summons to implead the Chief Secretary, instead of the President, and that is what was granted.

That done, I need not take more time on this, indeed, the application has offended the law as pointed out herein above; the objection is a point of law, which arises by clear indication from the pleaded pleadings; and

disposes of the case; the filed document is a fresh document as it contains new facts and provisions of law which were beyond the court order.

Therefore, basing on the aforesaid, the Preliminary point of law is sustained.

Consequently, the application is struck out accordingly.

Each party to bear its own costs.



A handwritten signature in blue ink, appearing to be "S.C. Moshi", is written above the printed name.

S.C. MOSHI

JUDGE

24/11/2022