

KATIKA MAHAKAMA KUU YA JAMHURI YA MUUNGANO WA TANZANIA

(MASIJALA KUU)

DAR ES SALAAM

MAOMBI MADOGO NA. 39 YA MWAKA 2022

KATI YA

FREDRICK ANTONY MBOMA.....MUOMBAJI

NA

SERIKALI YA MTAA KIBANGU.....MJIBU MAOMBI WA KWANZA

HALMASHAURI YA MANISPAA YA UBUNGO.....MJIBU MAOMBI WA PILI

MWANASHERIA MKUU WA SERIKALI.....MJIBU MAOMBI WA TATU

UAMUZI

29/11/2022 & 14/12/2022

MZUNA, J.:

Maombi haya yameletwa kwa mujibu wa vifungu namba 5(1),5(2), 5(3) na 6 vya Kanuni za "Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees Rules)" ya mwaka 2014 (**Kanuni za 2014**) na kifungu Na. 84 A cha Interpretation of Laws Act; na vifungu vinginevyo vya sheria vinavyohusika).

Mwombaji ameomba pamoja na mambo mengine, ***Mahakama itoe kibali kwa Muombaji*** kufungua shauri la kuomba Mahakama ipitie na

kutolea maamuzi mchakato na maamuzi yaliyotolewa na Mjibu maombi namba 1 na namba 2 katika zoezi la utoaji wa anuani za makazi kwenye eneo la Serikali ya Mtaa Kibangu; pamoja na msimamo wa Mjibu Maombi na 1 na namba 2 kuhusu suala la utolewaji wa taarifa kwa wananchi wakazi wa eneo la Serikali ya Mtaa wa Kibangu.

Mleta Maombi baada ya kuleta maombi hayo hapa mahakamani, upande wa wajibu maombi waliwasilisha pingamizi moja la awali la kisheria kwamba:-

"Maombi hayako sahihi mbele ya mahakama kwa kutokidhi vigezo vya kisheria kwa kushindwa kuambatisha maamuzi ambayo anataka kuyapinga".

Usikilizaji wa pingamizi hili la awali ulisikilizwa kwa njia ya mdomo. Upande wa mleta maombi alijiwakilisha mwenyewe wakati wajibu maombi waliwakilishwa na Msomi Wakili wa Serikali Bw. Erick Paul Bakilana.

Katika pingamizi hilo, Msomi Bwana Bakilana alisema kuwa mwombaji hajaambatisha uamuzi ambao anaupinga na ambao unapaswa kutenguliwa na mahakama hii. Katika kusesitiza hilo, aliwasilisha maamuzi ya Mahakama ya Rufani katika kesi ya **Amosi Fulgence Kalungula v. Kagera Co-operative Union (1990) LTD**, Civil Application No. 151/04 of 2018 na ile

ya **Felister Magayane v. Mabula Genge**, Civil Application No. 28/08 of 2019, zote za Mahakama ya Rufani na hazijawa 'reported'.

Kwa maoni yake anasema kwa kuwa haya ni maamuzi ambayo ni ya "judicial review" alipaswa aambatishe hayo maamuzi ambayo yanapaswa kuwa "reviewed". Hivyo kushindwa kufanya hayo kunafanya maombi haya kuwa ni batili. Anaomba yafutiliwe mbali.

Akijibu pingamizi hili, Mleta maombi alisema kuwa pingamizi halina mashiko kwa sababu hata kesi alizozitaja hazina mahusiano na shauri hili kwani zilihusu kushindwa kuambatisha nyaraka muhimu za uamuzi kuipa nguvu Mahakama kuu kabla ya kutoa ridhaa "leave". Pili, hiyo hati anayosema haikuambatishwa alipata shida sana kupewa na mgogoro kuhusu upatikanaji wake ameelezea katika kiapo chake. Amesisitiza kuwa kuna jambo la kujadilika kwa kuangalia kiapo na maelezo yake, yaani "arguable case". Ameiomba Mahakama hii kutupilia mbali pingamizi hili.

Katika kujibu tena "rejoinder" Msomi Wakili wa Serikali amesisitiza kuwa maombi haya hayana uamuzi ambao anaomba uwe "reviewed". Hivyo muhtasari wa Kikao cha Mkutano Mkuu wa Serikali ya Mtaa wa Kibangu alipaswa auambatanishe. Isitoshe hakuna barua aliyoonesha kuwa aliomba

akanyimwa wakati Kifungu No. 36 cha Sheria ya "Local Government (Urban Authorities) Act, Act No. 8/1982, kama ilivyorekebishwa mwaka 2002, inaeleza kuwa ni haki kwa kila mwananchi kupata muhtasari endapo atalipia gharama. Alisistiza maombi haya anaomba yatupiliwe mbali.

Baada ya kusikiliza hoja za pande zote mbili, jambo hapa linalohitaji kuamuliwa ni je maombi haya yako sahihi kisheria?

Sheria inayoongoza maombi kama haya ya kuomba kibali/ridhaa "leave" kwa maombi kama haya yahasuyo "prerogative orders of certiorari and Mandamus" imeelezwa vizuri katika vifungu namba 5 (1) na 5 (2) cha Sheria tajwa, **Kanuni za 2014**. Vitu muhimu vya kuambatisha ni:-

- (a) a statement providing for the name and description for the applicant,*
- (b) the relief sought;*
- (c) the grounds on which the relief is sought; and*
- (d) affidavit verifying the facts relied on.*

Kwa mujibu wa sheria tajwa, kuambatisha uamuzi "decision" si tashi la kisheria. Kama upande wa walalamikiwa wanaona hoja hiyo ina mashiko basi ilipaswa ijadiliwe katika kesi ya msingi baada ya kutoa ridhaa "leave" siyo kuletwa kama pingamizi.

Labda kwa ufafanuzi zaidi na kwa manufaa ya mleta pingamizi, katika hatua ya kuomba kibali "leave" kwa kesi ambazo mtu anatarajia kufungua maombi ya msingi ya "certiorari" na "mandamus" si wakati wa kujadili kesi ya msingi. Hayo yaliongelewa katika kesi ya **Cosmas Mwaifwani v. Minister for Health, Community Development, Gender the Elderly and Children And two Others**, Civil Appeal No. 312 of 2019, CAT at Dar es Salaam (unreported) kwamba:-

*"...We are in agreement with Mr. Tibanyendera that, the trial court wrongly dealt with the preliminary objection under discussion. The reason being that, in accordance with the affidavit and counter affidavit on the record, whether the appellant was availed with the outcome of the decision after expiry of more than a year and whether the delay was calculated so as to deny the appellant his right to seek remedies against the decision of the first respondent was seriously contentious. Therefore if the Principle in **Mukisa Biscuits Co. v. West End Distributors** (1969) EA 696 had been followed by the trial court, the factual depositions in the affidavit would have been presumed to be true. As a result, the purported preliminary objection should have been overruled for being premature and the application heard on merit."*

Jambo la kukataliwa kupewa Muhtasari wa kikao cha mkutano Mkuu wa Serikali ya Kijiji cha Kibangu, ni suala ambalo linabishaniwa. Hili liko wazi katika aya ya 4 ya Majibu ya maelezo ya mwombaji. Halipaswi kuamuliwa katika hatua ya awali kwa njia ya pingamizi.

Nikigusia kesi alizosema Msomi Wakili wa Serikali; ile ya **Amosi Fulgence Kalungula v. Kagera Co-operative Union (1990) LTD**, (supra) iliongelea maombi yaliyohusu kuongezewa muda ili afungue mapitio "revision" nje ya muda. Cha ajabu hakuambatisha maamuzi ambayo anayaomba mapitio hayo na isitoshe, kulikuwa na shaka kama kweli yapo. Mahakama ya rufani katika kutupilia mbali maombi hayo, ukrasa wa 7 ilisema:-

"...There is no doubt that the application is not premised on any decision of the High court or this Court against which the applicant would have validly sought extension of time to lodge an application for revision. Thus, the issue is not only that the applicant has not attached the relevant documents with regard to the case which he considers as the bases of his application, but also that their (sic) is none which deserves the consideration of the court..."

Kesi hiyo ya **Felister Magayane v. Mabula Genge**, (supra) katika ukrasa wa 7, Mahakama ya Rufani ilisema kuwa:-

"Without annexing a copy of the decision intended to be appealed against, it will be difficult for the judge to be sure, if there is truly an issue on a point of law justifying grant of the application for certification on point of law.

Of course, the omission alluded above are what led to the striking out of the application for being incompetent under Rule 46 (1) of the Rules.

On our part, we find the High court Judge correctly struck out the application for being incompetent.”

Kesi zote hizo zilihusu marejeo `revision” na rufaa “appeal”, hazina uhalisia na shauri tunalolijadili kuhusu kibali wakati wa ombi la “judicial review”. Hivyo pingamizi halina mashiko.

Baada ya kusema hayo, pingamizi hili linatupwa mbali bila gharama. Shauri litasikilizwa kwa tarehe itakayopangwa.

Imeamriwa hivyo.

Dated at Dar es Salaam, this 14th December, 2022.

12/14/2022

X 

Signed by: M G MZUNA JUDGE

