

IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CAUSE NO. 24 OF 2021

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

AND

**IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND
MISCELLANEOUS PROVISIONS) ACT CAP 310 RE. 2002**

AND

**IN THE MATTER OF THE DECISION OF THE REGISTRAR OF
SOCIETIES DATED 5TH NOVEMBER, 2021 ON ELECTION OF
SUNNI MUSLIM JAMAAT LEADERS**

BETWEEN

**THE REGISTERED TRUSTEES OF SUNNI
MUSLIM JAMAAT.....APPLICANT**

VERSUS

**THE REGISTRAR OF SOCIETIES1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT**

RULING

19 April & 5 May 2022

MGETTA, J:

The Registered Trustees of Sunni Muslim Jamat (henceforth the applicant) through a legal service of Captain Ibrahim Bendera, the learned Advocate, lodged an application for leave to apply for Judicial Review against the Registrar of Societies (the 1st respondent) and the Attorney General, (the 2nd respondent).

The application is brought under certificate of urgency by way of Chamber Summons made under **section 17 (2) & (4) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, No. 310** and **Rules 4,5 (1) & (2) and 7 (1) of the Law Reform (Fatal Accidents and Miscellaneous Provision) (Judicial Review Procedures and Fees) Rules of 2014**, (henceforth the 2014 rules). The chamber summons is supported by the affidavit affirmed by Nazir Ahmed Jusab and is also accompanied by the statement.

If leave is granted, the applicant intends to apply amongst other things, for certiorari to move this court to quash the decision and orders of the 1st respondent who received complaints from people or other legal entities who are not members and then made a wrong decision that the applicant's Chairman, Secretary, Deputy Secretary, Treasurer, deputy Treasure are elected for post of becoming members of Management Committee. They also intend to apply for mandamus to order the 1st respondent to allow elections of the leaders to be conducted in accordance to applicant's constitution; and, if any proposed changes to the constitution be made by members after the elections and in accordance to the constitution.

In his submission, Captain Bendera is aware that it is court's discretion to grant leave sought in order to enable the applicant to apply

for judicial review. The permission is only given after the applicant has established whether there is a substantial contentious issue raised to warrant the court to conduct judicial examination. Apart from what he submitted herein, he also added that the purpose for this application is for grant of leave to enable this court to look for the inconsistencies raised in the 1st respondent's decision in a letter of reference No. S0483/15 of 5/11/2021. He would also want this court to examine the legality, rationality and procedural propriety of the 1st respondent's decision.

Captain Bendera submitted further that paragraph 4(c) of the 1st respondent's decision is fatal in that Chairman, Vice Chairman, Secretary, Deputy Secretary, Treasurer, Deputy treasurer are not vying to be elected as members of the Management Committee, but they become members after being elected in their posts. Hence, the tenure prescribed in article 7 (1) of the constitution, management committee members concern with elected members of management committee. It does not concern with Chairman, Vice Chairman, Secretary, Treasure and Deputy Treasurer who are elected for their respective posts, hence becoming member of the management committee.

He added that the 1st respondent decision is highly erroneous because he received complaints not from registered member of the applicant. He allowed BAKWATA, an outside entity, to give election forms;

he allowed BAKWATA to be part of election process of the applicant; etc. He concluded by citing to me the case of **Said Ramadhani Mnyanga versus Abdalah Salehe** [1996] T.L.R 74 which was on application seeking leave to appeal against the default judgement. Straight away I would say that Said Ramadhani Mnyanga's case, as Captain Bendera would admit, concerned with an application which was not an application for leave to apply for judicial review. Therefore, the case is distinguishable from the present application.

Responding to submission made by Captain Bendera, Mr. Edwin Joshua Webiro, the learned state Attorney stated that the applicant has not shown sufficient interest to warrant the grant of leave and has failed to establish an arguable case to justify the application for judicial review. He stated further that the process of applying for leave is intended to exclude or eliminate frivolous or vexatious applications which would appear to be an abuse of the process of the court. He cited to me the case of **Cheavo Juma Mshana Versus Board of Trustee of Tanzania National Parks and Two Others**; Misc. Civil Cause No. 7 of 2020 (HC) (Moshi) (unreported).

Having considered the foregoing submissions, it is not in dispute that the present application was lodged within six months limitation period as provided for under **rule 6 of 2014 Rules**. It was held in the case of

Emma Bayo Versus the Minister of Labour and Youth Development & Others; Civil Appeal No. 79 of 2012 where by the Court of Appeal observed that:

".....at stage of leave the High Court is also required to consider whether the applicant is within six months limitation period within which to seek a judicial review."

What I should now consider is whether the applicant has made an arguable or *prime facie case* to warrant this court to grant leave to file judicial review and whether the application has shown sufficient interest to warrant the grant of leave.

It is equally not in dispute that in the case of Emma Bayo, the Court of Appeal enumerated three preliminary matters which this court must consider while determining its judicial discretion to either grant or refuse to grant leave to the applicant. The application for leave is a process intended to enable the court to eliminate and exclude frivolous or vexatious applications which would appear to be an abuse of the court process and to ensure that the applicant is only allowed to proceed to file judicial review whereby the court is satisfied that there is a fit case for further consideration.

Thus, the allegation that 1st respondent receives complaints to people or legal entities who were not registered members of the applicant is equal to speculations without basis. Moreover, the applicant has raised claims against BAKWATA without joining it to this application. To me that amounts to frivolous and vexatious. Admittedly, it is the discretion of this court to grant leave or not. It is granted where the court finds there is a contentious issue or *prime facie* case or an arguable issue being established by the applicant warranting for further judicial examination by the court.

Finally, I find that the application was timely lodged. However, the applicant has failed to establish sufficient interest and triable or arguable issue, the conditions precedent for the grant of leave. I thus find the application unmeritorious. Hence, the same is accordingly dismissed. Each party has to bear its own cost.

It is so ordered.

Dated at Dar es Salaam this 5th day of May, 2022.




J. S. MGETTA
JUDGE