

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM**

MISC. CAUSE NO.16 OF 2021

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

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

BETWEEN

EDWIN EMMANUEL MUKULASI.....APPLICANT

VERSUS

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

RULING

15 Nov 2021 & 8 Feb 2022

MGETTA, J:

On 3/9/2021, through a legal service of Mr. Sylvester Sebastian, the learned advocate, one Edwin Emmanuel Mukulasi, the applicant, lodged a chamber summons under **rule 5 (1) (2) (a) (b) (c) & (d) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and fees) Rules of 2014** (henceforth the Rule 2014), praying for leave in order to enable him apply for orders of certiorari, mandamus and prohibition against the decision made by the Police Force Immigration and Prison Service Commission (the 1st

respondent), the Permanent Secretary, Ministry of Home Affairs (2nd respondent) and the Attorney General (the 3rd respondent).

Through Jesca Joseph Shengena, the learned Principal State Attorney the respondents filed counter affidavit and reply to statement requesting this court to refrain from granting the leave sought by the applicant. When the application was called on for hearing, Mr. Sylvester Sebastian appeared for the applicant; while, Ms Jesca represented the respondents.

When the application was called on for hearing *vivo voce*, Mr. Sylvester adopted the contents in the affidavit; while, Ms Jesca also adopted the contents in the counter affidavit. Mr. Sylvester and Ms Jesca submitted that in the application the applicant has raised an arguable case and that there is no arguable case warranting the grant of leave sought respectively.

It is assertion of Mr Sylvester that in his application the applicant has established a *prima facie* or arguable case that a ground for seeking judicial review exists; has shown sufficient interests in the matter to which the application relates because it his employment that was terminated; has acted promptly by applying for leave before the expiry of six months; and, has shown that there is no any alternative remedy available to him. To support his submission, he referred me to the cases of **Pavisa**

Enterprises Versus the Minister for Labour, Youth Development and Sports and Another; Misc. Civil Cause No 65 of 2003 (HC)(DSM) (unreported); **R.V.T.R.C Exp National Federation of Self Employed and Small Business Ltd** (1982) AC 617; and the case of **Cheavo Juma Mshana Versus Board of Trustee of Tanzana National Parks and Two Others;** Misc. Civil Cause No 7 of 2020, (HC)(Moshi)(unreported).

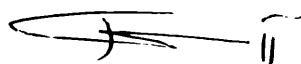
He insisted that in his affidavit and statement the applicant has shown that when his service was terminated he was not availed with right to be heard and the procedure was faulted. This is an arguable issue which will be one of the issues for determination if leave is granted.

With due respect to the submission made by Ms Jesca for the respondents, I have found no substantial reasons given to convince this court to refuse leave to the applicant. She tried to explain what would be fit to be explained in future and not at this stage of seeking a leave. Being supported by the cited cases, I find this case meritorious.

For reasons stated herein above, I do accordingly grant leave to the applicant to apply for judicial review. No order as to costs.

It is so ordered.

Dated at Dar es Salaam this 8th day of February, 2022.



J.S. MGETTA

JUDGE

COURT: This ruling is delivered today this 8th February, 2022 in the presence of Mr. Sylvester Sebastian, the learned advocate for the applicant and in the presence of Ms. Jesca Shengena, the learned Principal State Attorney for the respondents.



J.S. MGETTA
JUDGE
08/2/2022