

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

MISC. CIVIL CAUSE NO. 25 OF 2021

**IN THE MATTER OF AN APPLICATION FOR ORDER OF
CERTIORARI AND MANDAMUS
AND
IN THE MATTER OF DISMISSAL FROM EMPLOYMENT OF
LAMECK RICHARD RWEYOGGEZA**

BETWEEN

LAMECK RICHARD RWEYONGEZA.....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

19 Jan & 24 Feb 2022

MGETTA, J:

Pursuant to the leave granted to the applicant, Lameck Richard Rweyongeza by this court, the applicant filed a chamber summons supported by an affidavit and accompanied by a statement and moved this court to grant the order of certiorari for the purposes of quashing the decision made on 31/5/2021 by the Police Force, Immigration and Prison Services Commission (the 1st respondent); and the order of mandamus

for purposes of compelling the Permanent Secretary, Ministry of Home Affairs (the 2nd respondent) to reinstate him to his employment as the decision for dismissal from employment by the 1st respondent was reached without having jurisdiction to do so.

The ground relied upon by the applicant for the reliefs sought are that the 1st respondent had no any power whatsoever to dismiss him from employment as such power can only be exercised by the 2nd respondent. The 1st respondent assumed power which he did not have as a result his decision was rendered *void ab initio*. As far as the present matter is concerned, the 1st respondent would have exercised an appellate power over the matter if at all the 2nd respondent would have been given chance to exercise his legal power of dismissing him from his employment. He stated that he was therefore dismissed from employment without following the procedures to dismiss a police officer of the rank of Assistant Inspector. Thus, that decision amounted to illegality as well impropriety.

He also states that the decision complained of was unreasonably arrived at that no any reasonable authority could ever arrived at it as the 1st respondent dismiss him from employment without proving the allegations contained in the charge levelled against him.

In his affidavit, he stated that he was on 26/4/2006 employed by the Tanzania Police Force at the rank of Police Constable. On 31/5/2021,

at the time he was dismissed from employment, he had already reached the rank of Assistant Inspector of Police and was stationed at Chang'ombe Police Station where he was discharging his duties.

He however admitted that before he was dismissed, he was first charged before a military tribunal with three offences allegedly being committed on 17/2/2020. He was heard by military tribunal and finally the decision was made against him. He then continued discharging his duties until on 18/6/2021 when he received a letter from the 2nd respondent informing him that he was dismissed from employment with effect from 31/5/2021, by the 1st respondent on the allegation that he was found guilty of disciplinary misconduct by the military tribunal.

Furthermore, upon dismissal from employment on 31/5/2021, the 1st respondent directed the 3rd respondent namely the Inspector General of Police to communicate to him about the decision. Acting on such direction, the 3rd respondent, through his letter dated 18/6/2021 notified him about such decision. He averred that he was aggrieved by such decision and did not have any other remedy available after the 1st respondent had assumed power of the 2nd respondent to dismiss him. Since the 1st respondent's decision is final and conclusive, he had nowhere he could have appealed. The only remedy he remained with was to file the present application.

Having the foregoing in mind, I examined written submissions filed herein by Mr. Mwang'enza Mapembe, the learned advocate who represented the applicant and that of Mr. Daniel Nyakiha, the learned State Attorney who represented the respondents; and, at the end, I decided to go straight forward determining this application.

According to Mr. Mwang'enza, the Police Force, Immigration and Prisons Service Commission, the 1st respondent had no any power to dismiss the applicant from employment as such power is vested upon the Permanent Secretary, Ministry of Affairs, the 2nd respondent. As far as the applicant's dismissal was founded on disciplinary misconduct, **Part IV** titled **Discipline** of the **Police Force Service Regulations of 1995**, GN No.161 of 1998 becomes relevant here. As correctly submitted by Mr. Mwang'enza, under this **Part IV**, it is where I find persons and or authorities with powers to inflict disciplinary punishments. Elaborative procedures are given therein on how to handle disciplinary proceedings involving police officer of the rank of Assistant Inspector to the rank of Assistant Commissioner. For ease of reference, **regulation C.3** of Part IV reads:

*"C.3 (1) Subject to the provisions of section 7(3)
of the Police Force and Prisons Service
Commission Act, the disciplinary authority in*

*the 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) *Any offence against discipline or any other misconduct by a Senior Police Officer shall be dealt with in accordance with these provisions.*
- (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 by 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) may, if he is of the opinion that the report should be amplified or that further investigation is desirable, refer the matter back to the Inspector General for further investigation and report;

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

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 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.

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 this application.

Strange enough, instead of doing as stated herein above, after the military tribunal has heard and made the inquiry to the conclusion, it proposed to the 3rd respondent the punishment to be inflicted on him as quoted at page 55 that:

"Hivyo napendekekeza apewe adhabu stahiki kwa makosa yote mawili ili iwe fundisho kwa watu wenye tabia ya kutenda makosa ya utovu wa nidhamu yanayofanana na hayo."

It is indeed proper that such report was forwarded to him in terms of **regulation C.6 (8) (b) of the Regulations** which reads and I quote that:

"(8) when the hearing of the inquiry has been concluded, the appropriate tribunal shall come to a finding on each of the charges and-

(b) if the Inspector General is not the appropriate tribunal, the tribunal, if it finds the Inspector guilty of any charge, shall forward the record of the inquiry together with its findings and its recommendation as to an award to the Inspector General;

What was not proper is that after the 3rd respondent has received that report he ought to have submitted it to the 2nd respondent who could have considered it and proceeded to dismiss the applicant from employment, as proposed in the report. This is so because in law neither the military Tribunal, the 1st respondent nor the 3rd respondent has any power to dismiss the applicant from employment. In their joint counter affidavit, it is stated at paragraph 7 that upon receipt the report from the military tribunal, the 3rd respondent forwarded the same to the 1st respondent who proceeded to dismiss the applicant from employment on 31/5/2021. In law, that was wrong. The 1st respondent is taken to have exceeded or dismissed the applicant from employment without any power

whatsoever. As correctly submitted by Mr. Mwang'enza, 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) of the Police Force and Prison Services Commission Act of 1990**, (henceforth the Act) which read that:

"The final disciplinary authority in respect of officers of the rank of Assistant Inspector to the rank of the Assistant Commissioner is vested in the Commission"

Thus, the 1st respondent's 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 7(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.

I am of the considered view therefore that one could not have jumped the process laid down by the law and bring in the process that is not sanctioned by law. The 1st respondent could have waited until the matter is brought to him by way of an appeal lodged before it by the applicant, if at all he could has been aggrieved by the 2nd respondent's decision, and then proceeded to determine such an appeal and finally gave its decision which in law would be final and conclusive.

I support my decision by the decision of my learned bother, Hon. B.S. Masoud, J who faced a similar situation in the case of **Elizabeth Ndambala Versus The Police Force Immigration and Prison Service Commission and Two Others**; Misc. Civil Cause No. 39 of 2020 (High Court - Main Registry) (DSM) (unreported). My learned brother found that:

"The excess of jurisdiction, in my humbly opinion, was a result of material violation of the procedure which is apparent and self explanatory under regulation C.6 of the Police Force Service Regulation, 1995."

Again being faced with another similar situation in the case of **Kevin Peter Makaranga Versus The Police Force Immigration and**

Prison Service Commission and Two Others; Misc. Cause No. 7 of 2021 my learned brother, Masoud, J have the following to say at pages 5 – 6:

"From the record, the decision to terminate the applicant 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 regulation C.3 (1) is the final authority. The said commission is only entitled to entertain an appeal challenging the decision."

At this juncture, it is worthy to note that an administrative body like the 1st respondent or 2nd respondent or 3rd respondent as the case may be, in the course of exercise of their disciplinary powers are required to act in accordance with the law and procedures. Failure to do so, would invite application for judicial review as an important weapon in the hands of a judge of this country to whom an ordinary citizen would run and challenge such illegal administrative action. This argument is supported by the decision in the case of **Jama Yusuph Versus The Minister for Home Affairs** [1990] TLR 80 where a pertinent observation was made by the court in case of an administrative body arrived at a decision without or in excess of jurisdiction. It was observed by the court 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."

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 2nd respondent's decision, if at all, would have been made and the applicant aggrieved by it. This ground of lack or excess of jurisdiction alone is enough to dispose of this application without considering the remaining grounds.

For the reasons given herein above, I find that the applicant has made out his case. The 1st respondent acted *ultra vires*. I do accordingly issue an order of certiorari to quash the decision made on 31/5/2021 by the 1st respondent who dismissed the applicant from employment. I further issue an order of mandamus compelling the 2nd respondent to reinstate him to his employment without loss of his entitlement. Furthermore, the respondents are condemned to pay costs to the applicant.

It is accordingly ordered.

Dated at Dar es Salaam this 24th day of February, 2022.



J. S. MGETTA
JUDGE

COURT: This ruling is delivered today this 24th February, 2022 in the presence of Mr. Mwang'enza Mapembe, the learned advocate for the applicant who is also present; and, in the presence of Mr. Daniel Nyakiha, the learned state attorney for respondents.



J.S.MGETTA
JUDGE
24/02/2022