

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

MISC. CAUSE NO.19 OF 2021

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

**IN THE MATTER OF THE DECISION OF THE PRESIDENT OF THE
UNITED REPUBLIC OF TANZANIA CONFIRMING DISMISSAL OF THE
APPLICANT FROM PERMANENT AND PENSIONABLE
SERVICE AT THE MINISTRY OF AGRICULTURE**

BETWEEN

BURHAN ABDALLAH SHABAN.....APPLICANT

VERSUS

**THE ATTORNEY GENERAL.....1ST RESPONDENT
MINISTRY OF AGRICULTURE.....2ND RESPONDENT**

RULING

15 Dec 2021 & 27 Jan 2022

MGETTA, J:

Earlier on, one Burhan Abdallah Shaban (henceforth the applicant) lodged an application applying for leave to enable him apply for the orders of certiorari and mandamus.

Along with filing counter affidavit and statement in reply, the respondents namely the Attorney General (the 1st respondent) and the Ministry of Agriculture (the 2nd respondent) raised two preliminary

objections that: **one**, the application is bad in law for failure of including a party who is aggrieved by an ultimate decision; and, **two**, this court has no jurisdiction to entertain the matter.

At the time of hearing, Miss Stella Machoke, the learned state attorney dropped or abandoned the 1st preliminary objection and proceeded to argue for the 2nd preliminary objection on behalf of the respondents; and, the applicant enjoyed a legal service of Mr. Frank Mwalongo, the learned advocate.

In respect of the 2nd objection that this court has no jurisdiction to entertain the matter, Ms. Stella argued that the application is titled "*District Registry*" meaning that the application was intended to be filed and heard in the High Court of Tanzania, District Registry and not main Registry. However, the respondents were served with summons dated 12/11/2021 titled in the "*Main Registry*". Hence, confusion arises as to which registry should they appear. Since the summons was issued by the main registry, they have to appear before this court. It is her assertion that because this court is the main registry of the High Court of Tanzania, the title of the application should have been captured as the main registry. Since, the application is titled as district registry,

definitely, this court has no jurisdiction. She therefore prayed that to cure this mischief is to strike out the application.

On the other hand, Ms. Stella argued that this matter relates to issues of employer and employee. As a result, it is High Court Labour Division which has jurisdiction to tackle labour issues. Under **section 51 of Labour Institutions Act of 2004** which provides that pursuant to that provision, she argued this matter was supposed to be filed at the Labour Division of the High Court and not at main registry or district registry of the High Court.

In reply, Mr. Frank submitted that at the 1st schedule to the **Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and fees) Rules, 2014**, (henceforth the 2014 Rules) prescribed a Form A showing on how an application for leave should look like. The title of the form reads "*Main Registry/District Registry*" meaning that the application for leave may be filed either in the main registry or in the district registry.

According to him, filing such an application in either of the registry is all correct. He added that, as per the summons, this matter is before the main registry. He threw a blame to the court registry stating that whether to place his application at the district registry or main registry is

administrative function to which he did not have authority; and added that, that can be corrected by cancelling the words "*district registry*" and replacing the words "*main registry*". Referring to the overriding objective, he prayed that the correction be done and the case to proceed for hearing stage.

As regards to Labour Institution Act, the matter to be placed before the court does not matter whether civil or criminal, but rather a judicial review is an avenue of its own. Thus, this matter could not be categorised as labour matter. Hence, he prays that the preliminary objection be dismissed with costs.

In rejoinder, Ms. Stella submitted that the overriding objective principle could not apply in this situation instead the matter should be struck out. This is the only way to cure the matter.

Having heard the counsel in this application, it is worthy to point out that as submitted by Ms Stella it is true that the application is titled:

*In the High Court of Tanzania
Dar es salaam District Registry
at Dar es salaam*

If the applicant and or his advocate intended this matter to be heard and determined by this court, the title could have been speaking

by itself. He ought to indicate on the title that the intention was to have the matter be heard at the main registry. Failure to do that it amounts to inexcusable problem to which the overriding principle could not apply either.

It is improper therefore to transfer blame to the registry that it was, at the time they received a physical document, supposed to delete the words "*Dar es salaam District Registry*" and insert the words "*Main Registry*". Frankly speaking, that was the duty laying upon the advocate who drafted and filed it to make such correction before submitting it before this court. As it is indicated in Form A of the First Schedule to **Rules, 2014**, it was upon the advocate to choose between the two words "*Main Registry/District Registry*" appearing on the title. It is therefore a misconception to think that that it is allowed the matter like this one be filed at the district registry. It was a mistake of the advocate by titling the application wrongly as found herein. He ought to be vigilant, certain and careful in choosing and delete the words that was not relevant and remain with the relevant one as provided in Form A for the purposes of lodging the matter in the intended registry. His laxity is intolerable. It was not duty of the registry officer to do so.

I may agree that he filed an application on time to the main registry and it was admitted in main registry but when he brought the physical documents, I find it titled district registry. These registries are two different registries whereby the main registry deals with case like this one. Hence, I find that the application is untenable.

In connection to the foregoing, this court has jurisdiction to hear and determine application for leave, regardless whether normal civil or labour matter. It is therefore wrong to title the registry as a matter to be determined in district registry. Though there are sub registries, but the law and practice mandates that all applications under **The Law Reform (Fatal Accidents and Miscellaneous Provisions) Act**, Cap 310 have to be registered in the main registry.

For reasons stated herein above, I find the application not competent before this court. I do accordingly strike it out. No order as to costs.

It is accordingly ordered.

Dated at Dar es Salaam this 27th day of January, 2022.



J.S. MGETTA
JUDGE

COURT: This ruling is delivered today this 27th day of January, 2022 in the presence of Mr. Raphael Rwezaula, the learned advocate for the applicant and also holding a brief for Ms. Stella Machoke, the learned State Attorney for the respondents.



**J.S. MGETTA
JUDGE
27/01/2022**

