

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

MISCELLANEOUS CAUSE NO. 26 OF 2021

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

AND

**IN THE MATTER OF AN APPLICATION TO CHALLENGE THE
DECISION OF THE DISTRICT EXECUTIVE DIRECTOR OF
BAGAMOYO DISTRICT COUNCIL ON ILLEGAL SUSPENSION
OF**

**PRIMARY MINING LICENCE 0450DMS(PML) TO ONE M/S
MBARAKA YAHAYA RAMADHANI.**

MBARAKA YAHAYA RAMADHANI.....APPLICANT

VERSUS

**DISTRICT EXECUTIVE DIRECTOR OF BAGAMOYO DISTRICT
COUNCIL.....1ST RESPONDENT**

**THE ATTORNEY GENERAL.....2ND
RESPONDENT**

RULING

03 & 17 March, 2022.

MGETTA, J:

This application was brought by way of chamber summons which was filed on 16/12/2021 under **section 18(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act CAP 310** and **Rules 4 and 5(1) (2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014**. The applicant herein seeks for leave to file an application for Judicial Review for orders of Mandamus and Prohibition to

challenge the decision of the 1st respondent, the District Executive Director of Bagamoyo District Council which suspended the Primary Mining Licence 0450 DSM(PML) issued to him. The application is supported by the affidavit affirmed by the applicant and is accompanied by the statement.

During the hearing, the applicant was represented by Mr. Ramadhani Sebeku, the learned advocate; while, the respondents were defended by Ms. Adelaida Ernest, the learned State Attorney.

At the very beginning, Mr. Ramadhani adopted the applicant's affidavit and the accompanied statement and further submitted that the 1st respondent acted *ultravires* suspension or cancellation of the applicant's Primary Mining Licence No. 0450 DSM (henceforth the licence) which was issued by the Resident Officer under Mining law as amended. He had therefore no power to make such suspension or cancellation. He reiterated the prayers of the applicant that the 1st respondent be prohibited from continuing to suspend applicant's license and also be compelled to exercise its power according to the law.

Under paragraph 2 of the affidavit, the applicant claimed to be owner of the licence granted to him by the Ministry of Minerals and the

Mining Commission to mine sands at Magore Kiroma Ward in Bagamoyo District (henceforth the area) since 17/02/2020. It was issued to him for the period of one year. The licence was renewed on 17/02/2021. Upon being issued with the licence, he applied for a permit from the 1st respondent who on 10/8/2020 issued a letter of reference No. HWB/M.10/7/VOL.11.86 permitting him to mine sands at the area. Following such permit, the applicant entered into various contracts such as hiring sands excavator machine ready to carry on business of supplying sands.

It is averred at paragraph 5 of the affidavit that on 26/11/2020, through the letter of ref No. HWB/M.10/7/121, the 1st respondent stopped the applicant from proceeding with his mining activities which was carried out under the licence in the area on the allegation that the mining activities were carried out at Mataya Bondeni and Magore until the final conclusion of the investigation of complains raised by other residents of the said area. He then reported the matter to Bagamoyo District Commissioner, then to Pwani Region Commissioner.

The police investigation was conducted; and, it was revealed that the applicant was conducting sand mining activities at the area as per his licence and permit and not at Mataya Bondeni as alleged

of Bagamoyo District Council. The result of the investigation was communicated to the applicant orally. He alleged that, the 1st respondent neglected it and on 22/11/2021 issued a letter of ref No HWB/A.60/31/VOL.V/81 cancelling the permit on the ground that there were complaints from the public that the sand was being mined in hazardous area. It was that decision that aggrieved the applicant. Hence, this application.

He added that there was illegality to the decision reached as the investigation report indicated that the applicant complied with all the conditions necessary for grant of permit for prospects and mining of sand in the said area. Following that he thought he has established a prima facie case and therefore he has met all the conditions necessary for leave to be granted. He substantiated his prayer by referring to the case of **Philibert Mtei & Another Versus The Ubungo District Commissioner & Another**, Miscellaneous Civil Cause No 3 of 2018 (DSM) (HC Main Registry) (unreported) at page 4.

Mr. Ramadhani added that the application has been brought within time and the applicant herein has sufficient interest and *locus standi* in the matter as he has invested therein. Thus, he has an arguable case. He referred also to the case of **Itika Teka Versus**

Mara cooperative union ltd [1993] TLR 206. That in the present matter the applicant has no alternative avenue to seek for his remedies. He referred this court to the case of **Simon Manyaki Versus Institute of Finance Management** [1984] TLR 304. That the applicant has not yet heard.

In response, Ms. Adelaida adopted the counter affidavit. At the outset she concedes that the Ministry of mining is the one with power to issue and suspend the mining licence. The duty of the 1st respondent was only to issue permit and direct where the sand should be excavated. She further submitted that the applicant permit was cancelled by the 1st respondent due to the fact that it was found that the area was not suitable for mining activities. That the permit was issued mistakenly and therefore unclear. The procedures to notify the applicant about cancellation of the permit were followed. She added that in order to grant leave the applicant should show sufficient reasons.

Right from the outset it should be understood that in order the applicant be granted with the leave, he should just show that he has an arguable or prima facie case, and not to give what Ms. Adelaida said that he should give sufficient reason.

I have no doubt that this application was brought within six months counting from 22/11/2021 when the applicant's permit was cancelled to 16/12/2021 when this application was filed. The applicant has shown interest in this matter being the owner of the permit which was cancelled. Therefore, the issue for determination is simple. It is whether the applicant has established a prima facie case to persuade this court to grant the leave sought. From the records of this case, I am satisfied that the applicant has successfully established a prima facie case by showing interest in the matter intended to be lodged if leave is granted to him.

In the event, I find this application meritorious as the applicant has established a prima facie case. I consequently grant leave to him to file application for prerogative orders of mandamus and prohibition. Considering the circumstances of this application, no order as to cost.

It is so ordered.

Dated at Dar es Salaam this 17th day of March, 2022.



A handwritten signature in black ink, appearing to read "J.S. Mgetta".

**J.S. MGETTA
JUDGE**

COURT: This ruling is delivered today this 17th day of March, 2022 in the presence of Mr. Ramadhan Sebeku, the learned advocate for the applicant, but in the absence of the respondents and or their counsel for reasons known to themselves.



J.S. MGETTA
JUDGE
17/3/2022