

IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY) AT DAR ES SALAAM
MISC. CAUSE NO. 20 OF 2021

MAKOYE J. N. WANGELEJA.....APPLICANT

VERSUS

TANZANI INSTITUTE OF EDUCATION.....1ST RESPONDENT.

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

RULING

Date of Last Oder: 8/2/2022

Date of Ruling: 9/3/2022

MARUMA, J.:

The application is for leave brought through a chamber summons under section 18 (1) and 19 (3) of the Law Reform (Fatal Accident and Miscellaneous Provisions) Act, Cap 310 (R.E 2019) together with rule 5(3) with Law Reform (Fatal Accident and Miscellaneous Provisions) Act, GN No. 324 of 2014 by the applicant Makoye J.N.Wangeleja supported by the statement and his affidavit. The applicant before this Court is asking for a leave for three orders produced hereunder as follows:

- a) An order for Certiorari to call for, quash and set aside the decision of the 1st respondent to dismiss the applicant from service, the act which was in excess of powers, unreasonable, irrational, ambiguous and also a failure to follow procedures and allowing the applicant to analyse the evidences against him and the right to rebut;
- b) Grant of leave to the applicant for an order of mandamus to compel the respondents to allow applicant to be reinstated and compensated of all the months that he has not received his salary and other benefits for all the time since his termination
- c) Cost be borne by the respondents
- d) Any other order that the Court may deem just and equitable to grant.

The brief facts of this application are narrated from the applicant's story that, he was employed by the 1st respondent in the year 2001 as curriculum developer in teaching. The applicant also worked as director of research, information and publication from 2010 to 2014 and as senior curriculum developer from 2015 to 2018. On 17th December 2015, the applicant was appointed as part of the team

titled "Najifunza Kuhesabu Darasa la Pili" as per instructions on the "Waraka wa elimu Na.4 wa mwaka 2014 kuhusu Utayarishaji wa vifaa vya kujifunza na Kufundishia" provided by the Commissioner for education on 7th August 2014. For some reasons the applicant was removed from the team by the call of the Director General hence not participated in the early stages of drafting, editing, and inserting drawings. However, on 11th March 2016 the applicant received a letter from the Director General of the 1st respondent instructing him to read and gave out his opinions of the book titled "Najifunza Kuhesabu Darasa la Pili" which was at typesetting by that time. The applicant did the assigned task and through his letter dated on 17th March 2016 he reported to discover that the book needed a lot of improvements because the academician's opinion was insufficient and there were some errors in terms of its contents that was not yet to be discovered and dealt with. The applicant incorporated all of his opinion into the book and sent back the Director General with the recommendations. Later on, the book along with 43 other books was retracted from the use after the assessment by the Ministry of Education. On 18th October 2017, the applicant received a suspension notice pending investigation by the inquiry committee and decision

on 18th October 2018 the applicant received a copy of the decision of the board of Director General of Tanzania Institute of Education's Council which terminated his employment following an assessment conducted which declared a book to be unfit for use. The said assessment was later on invalidated by the special CAG's report investigated the matter, Also, another assessment conducted by the TAMISEMI, the book discovered that the book deemed to have minimal mistakes and could be continued being used in schools without upsetting the syllabus. Following the assessments conducted, the applicant pursued an appeal to the Public Service Commission against the decision of the board of Director General of Tanzania Institute of Education's Council which terminated his employment. The decision thereon was delivered on 5th May 2020 upheld the decision of the Council. The applicant further appealed to the President's office which gave its decision on 11th May 2021 still upheld the decisions the two previous decisions hence this application before this Court.

At the date of hearing, the applicant was presented by Mr. Jeremia Mtobesyya, learned advocate and the respondents were presented by Mr. Magambo, Ms. Adelaida Ernest and Rehema Mtulya all State Attorneys.

Supporting the application Mr. Jeremia, learned advocate for the applicant started by requesting the Court to adopt the contents of the statement and affidavit of Mr. Makoye together with annexures to be part of their submissions. Submitting on the basis of application, he adduced the fact that the applicant was an employee of the respondent with the effect of the date in **Annexure MI** an employment letter dated 30th March 2000. He submitted that the applicant based on his position was appointed to perform the task under paragraph 4 of the affidavit.

Unfortunately, the applicant did not service for long for the reasons stated in paragraph 5 of the affidavit, so he did not participate in the early stage of drafting, editing and inserting drawings in the book mentioned in paragraph 4. He further submitted that in March 2016, the applicant was directed by the Director

when he was been instructed, the book was already at the stage of typesetting. The learned advocate submitted that, the applicant performed the work as had been instructed in paragraph 6 and gave his opinion as stated in paragraph 7 of his affidavit. The counsel submitted that the applicant noted that the book has some errors and after his review, he notified and gave recommendations to the one assigned the work to him. He further said the book was put in circulation together with the other 43 books which were printed. However, the books were retracted from the use after assessment done by the Ministry of Education. After that event the applicant was suspended on 18th October pending investigation by the inquiry committee and the decision of the Council of the 1st respondent was given a year later terminated the applicant's employment. He referred the Court to **annexture M4** the decision of the board. He further submitted that the applicant aggrieved with the decision he appealed to the Public Service Commission which affirmed the decision of the board of director of Tanzania Institute of Education's Council referred to **annexure M8**. The applicant appeal to the President's office and the decision thereon upheld the previous

On the sequence of the above events, the counsel for the applicant highlighted three important facts to be considered by this Court;

1. That the assessment led to the charge to the applicant for the two chargers subjecting him to the disciplinary Committee were invalidated by the CAG's report as in M5 in para 17.9.1. The assessment in that parameters of para 17 it was not valid and there was no need of termination. The report was done on 26th March 2018 before termination.
2. That Paragraph 12 related to the annexure M6 which is a report of an assessments done by the Ministry. Going by the contents of the assessment the book which was led to the applicant termination was on the list of minor error item ii therefore as per report of 26th March 2018 the books were not supposed to be restricted from the circulation.
3. Also, if we refer the court to M2 The circular No.4 on the guidance of preparation of the books, the one who has the mandate of approving a book was the Commissioner for Education as part A paragraph 2 and 3, However the applicant was charged with approval of the book by his act of signing the

He concluded by submitting that, the observations of facts narrated above are arguable issues. To justify this, He referred the book of Chipeta on Administrative law at pg 6, the Re application by **Nagindas Himabhai Desai (1954), 2 T.L.R (R) 192** where held 2 and 3 on facts to establish a prima facie case and arguable issues are worth consideration of the Court to grant leave for the applicant to apply for certiorari and mandamus. The Court stated that for the applicants to succeed on such application it is sufficient for them to establish a prima facie case for the issue to writ.

Opposing the application, Ms. Rehema Mtulya, State Attorneys started by a prayer to adopt what have been stated in their affidavit to form part of their reply to the applicant's submission. She submitted that, as this is an important stage for the application for the orders, the applicant should state sufficiently interests or reasons for applying for leave to apply for orders of certiorari, mandamus and prohibition. She submitted that the Court is to determine as to whether the applicant has shown sufficient reason to the matter relate to the application. It is also the duty of the Court, to confine itself to the question of legality to the extent that the Court has to consider whether decision making authority exceeding its powers and

reasonable man could reach or otherwise abuse its power. She further submitted that, the matter at hand showed that the applicant was accorded with the right to be heard before this Court and his dismissal through an inquiry committee conducted on 25th July 2018. She said before the inquiry the applicant was served with the notice and charge of which he replied with his defence within 14 days from the date of notice and the charge. The inquiry committee was the one to determine the innocence of the applicant annexure **SG4** and not the Council/board which terminated the applicant as explained by the applicant in the application. She further submitted that, the decision of the Council was in accordance with law and the facts that the applicant was accused and charged with two grievous offences, the only punishment was termination. She insisted that the decision made by the 1st respondent was logical and reasonable as it was made through the whole process of investigation and inquiring committee in accordance with the law.

Mr. Magambo, learned State Attorney assisted Ms. Rehema, State Attorney added that, the applicant did not establish a prima facie case to be granted with the leave on the following grounds briefly summarised that the applicant's counsel vividly stated that

was reviewed the book as professional and give the opinion which is accountable for the loss occurred due to the gross negligence and he was administratively tried fairly, he also pointed out that there is no any area which was mentioned that respondents did not follow procedure or anything which was conducted against natural justice in whether on inquiry committee or Public Service Commission. He also submitted that the CAG's report came after the termination and moreover, it focused on the guidance on the assessment of the books of which applicant was responsible to use the said Guidance. Therefore, the focus was on loss occasioned which led to termination from negligence of the applicant and not the report which shows the use of Guidance.

In his rejoinder, Mr. Jeremiah for the applicant retreated his submission in chief and authorities submitted. He also insisted that the fact that the applicant was held accountable for reading, reviewing and issue an opinion which made him accountable for the results of his task which was acted upon and caused gross loss, However, the two charges are talking about something else. He also submitted that since the CAG report came after the termination,

as indicated that what have been done was wrongly conducted. Therefore, there was no basis for termination.

It is a known established principle that, in determine prayers for leave for judicial review, the Court should direct itself to the criteria to warrant a judicial review as it is the main issue in this application to be determined by this Court. This has guided in the case of **EMMA BAYO VERSUS THE MINISTER FOR LABOUR AND YOUTH DEVELOPMENT & 2 OTHERS**, Civil Appeal No. 79 of 2012 at page 8 of the decision, the Court laid down three tests to pass, that there must an arguable case, application should be within 6 months limitation period and the last one to show sufficient interest to the application.

Looking at the arguments from both sides for and against for this application. This Court is only directing itself on the tests to qualify for leave for judicial review as correctly pointed out by the learned State Attorneys for the respondents.

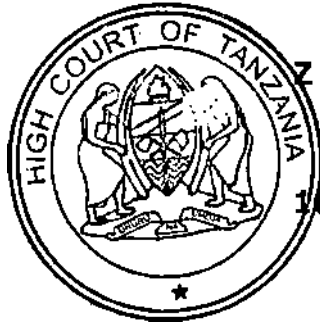
Determining the issue of arguable case, with due respect to the submissions made by both sides, this Court should also restrict itself on the preliminary matters only and not on the substantive matters as stated in the case of **Re Bavic International SA (Bureau Vertas) 2005)2 FA 42**

(HCK) that, the issue raised by the applicant should be determined at a later stage on Certiorari and Mandamus.

Considered the above guidance, through the hearing of the application, the learned counsel from both sides were argued on the arguable issues transpired in this application. Without going into the depth of the issues as guided above, just to mention the few. It demonstrated the issues such as to whether the board terminated the applicant's employment has the mandate to do so. Also, the issue on whether the charges against the applicant were the ones supposed to be charged with. Lastly, the issue on whether the punishment given connotes and amount the punishment given. All these issues without going deep into the pleadings they have established a *prima facie* case to be arguable at a later stage in the intended prayers for *certiorari* and *mandamus* as guided by the case of **EMMA** and **Nagindas (supra)**.

As for the aforesaid, I find the application to qualify for the tests laid in the cited authorities above to warrant a leave for judicial review. In view of the findings above, this application has merit and is accordingly granted to the applicant with a leave to apply for judicial review within the prescribed time. No order as to costs.

Dated at Dar es Salaam this 10th March 2022.



Z A Maruma,

JUDGE

10/03/2022.