

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

MISCELLANEOUS CIVIL CAUSE NO. 3 OF 2022

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

**IN THE MATTER OF LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS
PROVISIONS) ACT, (CAP 310, REVISED EDITION, 2019) AND THE LAW
REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) (JUDICIAL
REVIEW PROCEDURE AND FEES) RULES, 2014**

AND

**IN THE MATTER OF AN APPLICATION TO CHALLENGE THE DECISION OF THE
ILLEGAL BOARD AND ILLEGAL EXTRA ORDINARY GENERAL ASSEMBLY TO
EXPELL THE EXECUTIVE DIRECTOR AND BOARD CHAIRMAN FROM OFFICE**

AND

**IN THE MATTER OF AN APPLICATION TO COMPELL THE KCB BANK TANZANIA
LIMITED TO CHANGE SIGNATORIES TO VARIOUS ACCOUNTS**

BETWEEN

THE EASTERN AFRICA NATIONAL NETWORKS OF AIDS

AND HEALTH SERVICE ORGANIZATION (EANNASO).....1st APPLICANT

THE CHAIRMAN OF THE BOARD OF DIRECTORS FOR EANNASO...2nd APPLICANT

THE EXECUTIVE DIRECTOR FOR EANNASO3RD APPLICANT

VERSUS

SALOME ATIM..... 1ST RESPONDENT

JOAN CHAMUNGU MSUYA2ND RESPONDENT

CONSOLATA KIARA3RD RESPONDENT

ZABIB MUSA.....4TH RESPONDENT

KCB BANK TANZANIA LIMITED5TH RESPONDENT

RULING OF THE COURT

08/4/2022 & 19/4/2022

GWAE, J

The applicants, the Eastern Africa National Networks of Aids and Health Services Organization (EANNASO), the Chairman of the Board of Directors of EANNASO and Executive Director for EANNASO (Hereinafter to be referred to as 1st, 2nd and 3rd applicant respectively) have brought this application praying for leave to apply for an order of certiorari on the following grounds;

1. That, the purported resolutions made by the Salome Atim, Joan Chamungu Msuya, Consolata Kiara and Zabib Musa (to be referred hereinafter as 1st, 2nd, 3rd and 4th respondent respectively) dated 21st January 2022 through Board Meeting expelling the 2nd and 3rd applicant as well as making some changes within the 1st applicant were illegal.
2. That, the purported resolutions made by the 1st, 2nd and 3rd respondent herein dated 1st February 2022 through Extra Ordinary General Assembly expelling the 2nd and 3rd applicant were illegal

The applicants have further demonstrated, orders to be sought in the intended application for review, these are;

1. An order quashing both resolutions held on the 21st January 2022 and 1st February
2. An order compelling the 5th respondent, KCB Bank Tanzania Limited to change signatories to all EANNASO bank accounts by removing the past interim Executive Director one Onesmus Kalama Mlewa and replacing him with current Director one Mwananawe Aimable as requested through the letter dated 15th March 2022
3. An order prohibiting the respondents from conducting the illegal Board Meeting and illegal General Assembly in the future

This application is brought under Rule 5 (1), (2), (3), (4), (5) and (6), Rule 6 and Rule 7 (1), (2), (3), (4) and (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure and Fees) Rules, 2014 (Herein "the Rules") and all other enabling Provisions of law.

On the 8th April 2022 when this application was called on for hearing, Mr. F. Muhalila, the learned advocate appeared for the applicants while the respondents were absent and the application was therefore heard ex-parte pursuant to section Rule 5 (2) of the Rules

The applicants' counsel sought for adoption of the applicant's affidavit for consideration of this matter. However he added that, there are reasons as to why the applicants are complaining, to wit; that, the said meetings conveyed was in a total violation with the 1st applicant's Constitution under Article 11 which requires the Board to be chaired by the Chairperson or a delegate of the Board Chairperson and that, the Board was not properly constituted as there must be at least five members whilst in the said meeting there were four persons though one Consolata Kyara was not qualified since she did not pay her subscription fees for two years consecutively. He argued that the meeting held on the 1st February was also illegal since its notice was of one day instead of 21 days' notice as per Article 3 of the 1st applicant's Constitution.

Finally, Mr. Muhalila sought an order temporarily restraining the respondents from conducting any businesses or action against the 1st

applicant pursuant to Rule 5 (6) of the Rules due to reason that they are illegally assuming the Board authority.

As a general rule of practice and procedure, an affidavit for use in court, is a substitute for oral evidence (see **Phantom Modern Transport (1985) Ltd Versus D. T. Dobie (Tanzania) Limited**, Civil References No. 15 of 2001 and 3 of 2002 (unreported) and **Uganda Commissioner of Prisons, ex-parte Matovu** (1966) E.A. 514 at p. 520.

Having considerably looked at the applicants' joint affidavit and verbal submission of the applicants' learned advocates, I have observed that the applicants have demonstrated facts warranting this court to hold that, they are sufficiently interested in the matter and that they have been adversely affected by the decisions taken by the respondents, hence they are eligible person to apply for a judicial review. There is also arguable case if this application is granted since the respondents are alleging that the purported resolutions are ineffectual since composition of the Board of Directors is questioned for lack of requisite Coram as required by the 1st applicant's Constitution and that the 3rd respondent seized to be a member of the Board following her failure to pay the necessary subscription fees for two years consecutively.

Circumstances in which an application for leave to apply for judicial review is grantable were judicially emphasized by the Court of Appeal of Tanzania in the case of **Emma Bayo vs. The Minister for Labour and Youths Development and two others**, Civil Appeal No. 79 of 2012 I which it was held that'

"The stage of leave serves several important screening purposes. It is at the stage of leave where the High Court satisfies itself that the application for leave has made out any arguable case to justify filing of the main application. At the stage of leave the High Court is also required to consider whether the applicant is within six months limitation period within which to seek judicial review...At the leave stage the applicant has to show that is where the applicant shows that he or she has sufficient interest to be allowed to bring the main application. These are preliminary matters which the High Court sitting to determine the applicant's application for leave should have considered while exercising its judicial discretion to either grant or not grant leave to the applicant.

See also decision of this court in **Cheavo Juma Mshana v. Board of Trustee of Tanzania Nation Park**, Miscellaneous Civil Cause No. 7 of 2020 (unreported) High Court at Moshi) and **Isaya Joseph Chawinga vs. Commissioner** General of Immigration and Hon. Attorney General,

Miscellaneous Cause No. 50 of 2020 (unreported-H.C sitting at Dar es salaam).

The same position has been discussed in the Book by D. B. Chipeta titled "**Administrative Law in Tanzania**, A Digest of Cases, 2009 Mkuki na Nyota Publishers where it is recommended that the High Court in an application for leave to apply for judicial review has to consider, **firstly**, whether or not facts contained in the affidavit in support of the application, if true, would constitute a reasonable ground for the form of reliefs sought, **secondly**, whether the applicant has sufficient interest in the matter to which the intended application relates, **thirdly**, whether on the facts, the applicant will raised an arguable or prima facie case, **fourthly**, whether the applicant has not been guilty of dilatoriness and **fifthly**, whether there is no speedy remedy and effective remedy is available in favour of the applicant.

In our instant application, guided by the above principles and as earlier explained, the present applicants are found to have thoroughly exhibited that, there is arguable case by stating that, the respondents unlawfully conducted the meetings as the same were not properly constituted, that, the notice issued for the Extra General Assembly was in violation of the 1st applicant Constitution under Article 3 of the same. The applicants have also


demonstrated their rights or interests in the projected application for judicial review and they have deliberated as to how they can be adversely affected by the respondents' decisions as well as the fact the only effectual remedy is by way of judicial review.

In this application, I am also asked to issue an order temporarily restraining the respondents from conducting any 1st applicant's business or action pending hearing and determination of the main application for judicial review, I do not see any justifiable reason warranting me to decline granting the applicants' prayer of interim order as doing otherwise may likely cause irreparable and detrimental loss to the 1st applicant.

Consequently, I find merit of this application, by virtue of Rule 5 (1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions), (Judicial Review Procedures and Fees) Rules, GN. 324 of 2014, I hereby grant the applicants' application for leave to apply for judicial review meanwhile the impugned respondents' resolutions are temporarily stayed in relation to the affairs of the 1st applicant's till ordered otherwise by this court pursuant to Rule 5 (6) of the Rules. The applicants have to file their intended application within **fourteen (14)** days from the date of this ruling. Costs of this application shall abide the result in main application.


Order accordingly.

Dated at Arusha this 19th April 2022



M. R. GWAE
JUDGE
19/04/2022

Court. Ruling delivered this 19th day of April 2022 in the presence of **Mr. Muhalila**, the learned counsel for the applicants and in the absence of the respondents.



M. R. GWAE
JUDGE
19/04/2022