

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM
(CORAM: MGETTA, KAKOLAKI, MARUMA, JJJ)**

MISCELLANEOUS CIVIL CAUSE NO. 28 OF 2021

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI
AND PROHIBITION
AND**

**IN THE MATTER OF THE NATIONAL PAYMENTS SYSTEM ACT, CAP 437
AS AMENDED BY ACT NO. 3 OF 2021 AND IN THE MATTER OF THE
NATIONAL PAYMENTS SYSTEM (ELECTRONIC MOBILE MONEY
TRANSFER AND WITHDRAWAL TRANSACTIONS LEVY)
REGULATIONS, GN 496A OF 2021**

BETWEEN

LEGAL AND HUMAN RIGHTS CENTRE.....APPLICANT

VERSUS

THE MINISTER FOR FINANCE AND PLANNING.....1ST RESPONDENT

THE MINISTER FOR COMMUNICATION

AND INFORMATION TECHNOLOGY.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

23 Feb & 18 May 2022

MGETTA, J:

On 3/11/2021 when this matter was called on for necessary orders, Mr. Erigh Rumisha, the learned state attorney arose and submitted that this matter emanates from a ruling delivered on 13/10/2021 of this court in Misc. Cause No. 11 of 2021 (Hon. Mgetta, J) granting leave to the applicant to apply for judicial review. The respondents were aggrieved by that ruling. On

15/10/2021, they lodged a notice of appeal to the Court of Appeal intending to challenge that ruling. He argued further that the appeal has already been commenced by filing a notice of appeal. As a result, this court is unclothed with jurisdiction to entertain this application.

To support his argument, he referred this court to the decision in the case of **Aero Helicopter (T) Ltd. Versus F.A. Jehaness** [1990] TLR 142, 145 and the case of **Mirambo Ltd Versus Commissioner Geneal & Attorney General**; Misc. Cause No. 7 of 2021 at Page 45. He also cited to us a case of **Prosper Peter Munis Versus Yunis Bakari Mshana**; Misc. Application No. 151 of 2019 at page 6-9 where it is stated that once a notice of appeal has been lodged to the Court of Appeal, the High Court ceases to have power over any proceeding concerning that matter. He further cited the case of **Interbest Investment Co. Ltd Versus Standard Chartered Bank (TZ) Ltd**; Civil Application No. 190 of 2019 at page 11-12, and the case of **Attorney General Versus Tanzania Ports Authority and Alex Msama**; Civil Application No. 467/17 of 2016 at page 11. Finally, he prayed that this application be dismissed.

In response, Mr. Mpale Mpoki, the learned advocate for the applicant, submitted that since the decision made by this court in Misc. Cause No. 11

of 2021 have the effect of granting a leave only to the applicant, the same does not cease jurisdiction of this court over the present matter for being interlocutory decision not disposing of the matter as when leave was granted the present application was yet to be filed. This is so as the filing of this application depended on the grant of leave. It is not in dispute that, once a notice of appeal is dully lodged to the Court of Appeal, the High Court ceases to have jurisdiction over the matter appealed against. But that position is different from the present one because what is intended to be appealed against is the decision that granted a leave to the applicant to file this application for judicial review, and not one emanating from the proceeding of the present matter.

In his rejoinder, the counsel for the respondents submitted that the present application for judicial review have its foundation from the application for leave granted by this court in the impugned ruling, the subject of notice of appeal and that since the respondents have commenced the appeal by filing notice of appeal against that ruling, to proceed with this application for judicial review would jeopardize the respondents. Likewise, in the event the Court of Appeal sets aside the ruling and order that granted the leave; and, at the same time this court grants the orders of certiorari

and prohibition sought in this application, that would totally create a conflicting decisions and chaos in the administration of justice. He maintained that the institution of a notice of appeal deprived this court of its power to entertain this application for judicial review.

Having stated foregoing, we find it is not in dispute that this application for judicial review emanated or has its foundation from the ruling and order delivered by this court in Misc. Cause No. 11 of 2021 granting leave to the applicant. It is also not in dispute that by lodging a notice of appeal to the Court of Appeal on 15/10/2021 which was served upon the applicant on 21/10/2021, the respondents expressed their intention to challenge that ruling and order. Equally, it is not in dispute that the said Notice of appeal is still valid and intact as there is no order of the Court of Appeal which has invalidated it.

In the circumstances of this application, we are of the view that the propositions that granting a leave to enable the applicant to apply for judicial review is interlocutory decision which does not have the effect of finally determining the matter; and that in the event leave to apply for judicial review is granted by this court, it is not appealable under the law which the application for leave was preferred, may be a proposition which, we think,

would be one of the issues to be raised and determined by the Court of Appeal in the intended appeal.

However, we understand that the order for leave granted by this court in Misc. Cause No. 11 of 2021 does not finally dispose of the rights of the parties as it is not a final order. It just gave the applicant a permission to apply for judicial review. We are also aware that on 14/12/2021 in Misc. Civil Application No 16 of 2021, this court (Hon. Maruma,J) refused to grant leave to the respondents to lodge an appeal to the Court of Appeal to challenge the ruling and order of 13/10/2021 granting leave to the applicant. As a result, the respondents lodged an application to the Court of Appeal as second bite for leave to appeal. That application is yet to be disposed of. However, we feel moved not to disregard the Notice of appeal lodged by the respondents and decide to proceed with this matter. In the case of **Exaud Gabriel Mmari** (as legal and personal representative of the estate of the late **Gabriel Barnabas Mmari**) **Versus Yona Seti Akyo & Nine Others;** Civil Appeal No. 91 of 2019 (CA) (Arusha) (unreported), the Court of Appeal stated at page 6 that:

"Since there was nothing placed before the court, that the lodged notice of appeal has been withdrawn or was

deemed to be withdrawn, then the notice of appeal lodged is considered to be still intact. Under the circumstances, the High Court jurisdiction ceased to warrant continuation with the hearing."

Furthermore, it was held by the Court of Appeal in the case of **Mohamed Enterprises Tanzania Ltd versus Chief Harbour Manager;** Civil Appeal No. 24 of 2015 at page 12, that *"the effect of the Notice was to suspend the cause of action because whether the respondent was guilty of contempt or not, was a matter which was to be decided by the Court of Appeal"*.

We feel that we should avert the fear that if we proceed to hear and eventually grant the prayers sought by the applicant in the present application; and, at the same time, the Court of Appeal proceeds to hear and determine the intended appeal in favour of the respondents, that would create chaos in administration of justice and probably causing conflicting decisions, or rather as put forward by Mr. Rumisha, it will jeopardize the respondents.

It is in spirit of the findings above, we find it plausible and credible to strike this application for review in order to give way to the Court of Appeal

to see if such intended appeal is tenable before it. If it will be determined in favour of the applicant, obviously the doors of this court is always open for the applicant to come back before the court and refile the application for judicial review as the case may be.

For the reasons stated herein above, this application is accordingly struck out with the leave to refile it. Each party has to bear its own costs.

We accordingly order.

Dated at Dar es Salaam this 18th day of May, 2022.



J.S. MGETTA

JUDGE



E.E. KAKOLAKI

JUDGE



Z.A. MARUMA

JUDGE

