

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
TANGA DISTRICT REGISTRY  
AT TANGA

MISC. CIVIL CAUSE NO. 01 OF 2022

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

BETWEEN

LANGAELI SANGITO MARX..... APPLICANT

VERSUS

BOARD OF TRUSTEES OF MEDICAL  
STORES DEPARTMENT.....1<sup>ST</sup>RESPONDENT

THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT

Date of RULING- 18/05/2022

Mansoor, J:

RULING

This is an application made ex parte by LANGAEL SANGITO MARX "the Applicant" for Judicial Review made under the provisions of section 17 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap 310 R: E 2002 and Rule 5 (1) and 5(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure and Fees) Rules, 2014, for the following orders: -



- Leave to file an application for an Order of Certiorari Mandamus and Prohibition to remove into the High Court for the purpose of quashing the decision of the Board of Trustees of Medical Stores Department, to terminate the employment of the Applicant, and to order his reinstatement. Also, to order the 1<sup>st</sup> respondent to pay the Applicant the unpaid salaries for the whole period from termination to the date of the decision of the High Court for reinstatement.

The Applicant prayed for costs and any other orders that this court may deem just and fit to grant.

The application was supported by a statement of the Applicant dated 18<sup>th</sup> February 2022 and Verifying Affidavit sworn by the applicant on 18<sup>th</sup> February 2022.

Rules 5 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 requires that the application made ex parte shall be determined within 14 days from the date it was filed in court. It provides:

*"An application for leave under sub-rule (1) shall be made ex parte to a judge in chambers and be accompanied by:*



- (a) *A statement providing for the name and description of the applicant.*
- (b) *The relief sought.*
- (c) *The grounds on which the relief is sought; and*
- (d) *Affidavits verifying the facts relied on.*

The applicant, therefore, asks only for the reliefs affecting his own private rights, thus, he is asking for an order to quash the decision of the 1<sup>st</sup> respondent to terminate his employment, and the order of reinstating him back to work, and payments of unpaid salaries for the whole period of termination.

The Court, however, did not determine the application ex parte, as on the first date of mention, the respondents were already served by the Applicant himself, and since they already appeared in court in response to the summons, the Court allowed the respondents to be on record, and ordered for hearing inter-parties before the grant of leave. The application could not be determined within fourteen days' limit since there was an inter parte hearing, and the 14 days limit prescribed by the law had crossed over.



● Thus, before dealing with the arguments on the preliminary objection raised by Ms. Jackline Kinyasi, the State Attorney as well the merits of the application, it is necessary to examine, in brief, the facts which gave rise to the application

The case of the Applicant is set out in both the Statement of Facts and Verifying Affidavit. He states that he worked for medical stores department as a storekeeper and was unprocedurally and unfairly terminated from employment by the 1<sup>st</sup> respondent on 5<sup>th</sup> January 2015. The Applicant appealed against the decision to the Board of Trustees of Medical Stores Department, and on 8<sup>th</sup> June 2015, the Disciplinary Authority of Board of Trustees of Medical Stores Department dismissed the appeal and confirmed the termination of the Applicant's employment. Thereafter the Applicant filed the complaint at the Commission for Mediation and Arbitration "CMA" challenging the termination, and he was awarded by the CMA Tshs 27,489,000 as unpaid salaries, also, ordered for his reinstatement. The respondent filed the Revision at the High Court challenging the Award of CMA, it was Revision No. 28 of 2017, Mkasimongwa J, in which it was ruled that the decision of the Board is final and could



● only be challenged by way of Judicial Review, consequently the Award issued by the CMA was quashed and set aside for lacking the jurisdiction.

Then, the Applicant filed the application for extension of time to file an application to file Review, and this was granted by the High Court, Tanga Registry in Civil Application no. 41 of 2019, whereby Hon Mruma J, had granted the applicant 14 days from 7<sup>th</sup> February 2022 to file in Court the application for leave to apply for prerogative orders. Following the extension given, the Applicant filed this present application on 22<sup>nd</sup> February 2022.

The application faced the objections from the respondents where Ms. Jackline Kinyasi State Attorney said the present application does not meet the requirements set in the case of **Legal and Human Rights Centre vs Minister of Finance and Planning and 2 others, Misc. Cause No. 11 of 2011**, and said the application was not filed on time, as there was a delay of one day. The State Attorney argues that the 14 days granted expired on 21<sup>st</sup> February 2022, and the application was filed in court one day after the expiration of the time granted. The State Attorney cited the



● case of **Matoto Matoto vs Makuru Irega, Misc. Land Appeal No. 8 of 2021, High Court Musoma**, where the court discussed the issue of online filing of documents, and it was held that the date of payment of filing fees is the date of filing. On this, I entirely agree with the arguments of Advocate Ludovick Nickson who was representing the Applicant that the application was filed online on 20<sup>th</sup> February 2022, at 22.36 hrs. and it was admitted on 21<sup>st</sup> February 2022 at 10.31.am. The status of online filing can be seen from the JSDS. Although the filing fees was paid on 22<sup>nd</sup> February 2022, but in accordance with GN 148 of 2018, the date of filing is the date of submission online, thus the application was filed on time.

Regarding whether there is an arguable case, of course from the affidavit and the statement of the applicant, the case of the applicant is unfair termination, and the issue of whether he was fairly or unfairly terminated forms an arguable issue, and so the requirements set in the case cited by the counsel for the respondents were met and satisfied.



I am aware that the applicant was employed by Medical Stores Department which is an autonomous Department within the Ministry of Health, and the employees of the MSD as per section 10 (2) of the MSD Act are employed by the Director General of MSD. The 1<sup>st</sup> respondent is also vested with powers to institute disciplinary proceedings against the employees under section 12 (b) of the MSD Act, which provide that *"the Director General shall be the disciplinary authority and the Board the final Appellate Authority, in relation to all other employees of the Department"*

I noted that section 12 of the MSD Act started with the wording *"notwithstanding any other provision in the Civil Service Act, 1989 or in any other written law"*, and wondered whether the applicant is a public servant and whether the remedies available under the Public Service Act would be applicable to the Applicant. "Notwithstanding" means "nevertheless" or "despite" or "in spite", and this means that section 12 of MSD Act overrides the provisions of the Civil Service Act, it basically means that in spite the Civil Service Act or any other laws that may be contrary or written, section 12 of the MSD Act takes precedence over those and

supersedes any other law that might contradict it. The applicant has exhausted the remedies available under the MSD Act, and did not disrupt proceedings by filing this present application. The applicant has no other remedies available under the MSD Act or Civil Service Act or any other law, as the disciplinary body has already decided against the Applicant and the decision is final, so the only remedy available is the judicial review, and it is only this court that can give the applicant the remedies sought by way of judicial review. See the case of **Attorney general & 2 others vs. Amani Walid Kabouru (1996) TLR 156** in which the court held that "it had power to inquire into legalities of regulations, and it was held that the court had powers to quash the decision of the administrative bodies even the decisions to enact regulations as the court is the ultimate custodian of the rights and liberty of people."

Further, the action taken against the applicant by his employer was administrative in nature between an employer and employee which fell within the bracket of private law as opposed to public law. The action should have been heard and determined by the Labor Court, through the Labor Dispute Mechanism set by the law. The contract



of employment between an employer and an employee is not a public act but it is a matter of contractual relationship of two individuals, governed by private law and that therefore not an appropriate action to be taken under the judicial review.

In addition to the above, the MSD in its own, which is established under the law, has statutory authority to exercise disciplinary control over its employees. In any case, since the High Court has already ruled that the applicant should pursue his course by a Review, and I am functus officio to reverse the decision of the High Court, the application having met all the requirements, it is hereby allowed.

Consequently, the applicant is granted leave to apply for judicial review, within the time prescribed under the law.

It is so ordered.

DATED at TANGA this 18<sup>th</sup> day of MAY 2022



A handwritten signature in blue ink, appearing to read "L. Mansoor", is written above the printed name.

**L. MANSOOR,**

**JUDGE,**

**18<sup>TH</sup> MAY 2022**