

IN THE HIGH COURT OF TANZANIA

MAIN REGISTRY

AT DAR ES SALAAM

MISC CAUSE NO. 55 OF 2022

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

BETWEEN

- 1. MUSTAFA JUMA CHIWANGA**
- 2. RAJABU SAID MUYA**
- 3. JUMANNE RAMADHANI MABOKELA**
- 4. SEIF AMINI OMAR**
- 5. ISMAIL KIGUMI RASHID**
- 6. ABDALLAH HAMIS MTALIPA**
- 7. ABDALLAH RASHID KAGUMI**

APPLICANTS

VERSUS

- 1. MWENYEKITI SERIKALI YA MTA
KILIMAEWA TEMEKE MUNICIPALITY.....1ST RESPONDENT**
- 2. OCD CHANG'OMBE
TEMEKE POLICE STATION2ND RESPONDENT**
- 3. INSPECTOR GENERAL OF POLICE.....3RD RESPONDENT**
- 4. THE HONOURABLE ATTORNEY GENERAL.....4TH RESPONDENT**

RULING

28th February 2023 & 17th March 2023.

MZUNA, J.:

In this application the Applicants are seeking for leave to file an application for the following prerogative orders;

- 1. Certiorari quashing the decision of the 1st respondent contained in a document titled MWENENDO NA UAMUZI WA SHAURI LA TAASIS YA*

*MADRASSAT IITISWAAM TANDIKA DAR ES SALAAM of 4th October 2022
Annexure A to the affidavit which appointed interim committee and
abolished/stopped operation of the MADRASSAT IITISWAAM.*

- 2. Certiorari quashing the decision of the 2nd respondent dated 21st October 2022 made orally in a meeting held at Chang'ombe Police Station, Temeke Municipality, attended by the applicants, 1st respondent and members of the purported interim committee, declared MADRASSAT IITISWAAM unlawful assembly.*
- 3. Prohibition order prohibiting and restraining the 1st respondent from interfering with administration, meetings, decisions, conducts of the applicant's mosque and madrassa called IITISWAAM TANDIKA, TEMEKE MUNICIPALITY, Dar es salaam a religious institution.*

There is a joint affidavit affirmed by the applicants on 24th October 2022.

The facts relevant to this application as per the joint affidavit of the applicants being that, the applicants jointly constructed a mosque, madrassa and the house for the purpose of preaching and providing Islamic teachings. They as well formed a religious society called Al-Markuzul Islamiya Lil Iitiswaamil Muslimin (MIIM) whose registration of the organization is yet to be finalized.

On 8th to 9th August 2022 the worshipers to the mosque stopped the service of teacher (Ustaadh) of Madrasa one Hussein Ally Kingwana. His removal was communicated to the 1st respondent and was required to vacate the house. The 1st respondent constituted a judicial body which declared the applicants as illegal leaders of Madrasa Iitiswaam Tandika

and appointed an interim committee to run and administer the affairs of the Madrassa and to cause the MADRASSA IITISWAAM to be registered as the Board of Trustees of the Organization at RITA. The applicants were given a 14 days' notice to register and handover the Madrassa to the interim committee.

The applicants were not amused by the decision of the 1st respondent. They wrote a letter to the 1st respondent through the service of M/S Nassoro & Co Advocates which was responded to (annexed as "C" and "D" respectively to the statement).

The hearing of the application proceeded orally. Mr. Juma Nasoro the learned Advocate appeared for the applicants, Mr. Salehe Manoro, the learned State Attorney appeared for all respondents.

The main issue is whether there are reasonable grounds upon which leave can be granted?

Arguing in support of the application, Mr. Nasoro, submitted that application meets the following conditions for grant of leave; One existence of a decision sought to be challenged. Two, Existence of prima facie case or arguable case and; three, it was made without undue delay. The 1st respondent turned itself as a judicial body and declared the applicants as illegal leaders of the Madrassa, formed an interim

committee, run the affairs of the Madrassa and conferred powers to register the Registered Board of Trustees of the Organization RITA, gave the applicants 14 days to handover the Madrassa and closed the Madrassa until it is rebuilt by the interim committee. That, the averment at paragraph 4,5 and 6 demonstrates the existence of prima facie case.

Mr. Nasoro submitted further that the application is within time as the application was filed on 27th October 2022 while the impugned decision was made on 4th October 2022.

It is proceeded further that, there is no any other way to challenge the decision of the 2nd respondent other than by way of judicial review. On 20th October 2022, the OCD Temeke gave oral decision that the assembling at the Madrassa was illegal for want of registration. He even threatened to institute criminal charges. He humbly prayed for the application to be granted.

In reply thereto, Mr. Manoro, the learned State Attorney, adopted the counter affidavit to form part of his submissions. He made a remark that the annexed decision of the Chairman (annexture B to the counter affidavit) is not signed, dated or stamped. He submitted that the same be ignored.

He insisted that the application fall short of proving the requirement for the grant of leave as well stated in the case of **Pavisa Enterprises v The Minister for Labour Youths Development and Sports & Another**, Misc, Civil Case No. 65 of 2003HC (Unreported) which includes, existence of an arguable case, sufficient interest, acted promptly and there must be no alternative remedy.

He submitted that the applicants run their affairs under the unregistered organization through the mosque and madrassa which is contrary to the procedure. He submitted further that the 1st respondent has a duty to direct institutions to follow procedure laid down by law as the overseer of security. The applicants failed to show existence of sufficient interest as the impugned decision is not annexed. The application should not be granted as applicants have failed to meet the required conditions for its grant.

In the rejoinder, Mr. Nasoro reiterated that they have met all conditions laid down in **Pavisa Enterprises Case** (supra) at page 8. Annexure B is not signed by the 1st respondent for reasons not disclosed to the applicants. He signed at the 1st page and stamped with seal of Mwenyekiti wa Mtaa Kilimahewa. The said signature resembles the one signed in the counter affidavit. He urged the court to compare it under

section 75 (1) of the Tanzania Evidence Act, Cap 6 RE 2019 as the signature was not disputed.

The allegation that the applicants have failed to show sufficient interest is unfounded. Paragraph 2 of the affidavit that the applicants built the house, mosque and madrassa for the purpose of organizing themselves. The issue of unlawful assembly does not hold water, he insisted.

Mr. Nasoro finds the argument that the registration of the organization leads to un-lawful assembly to be weak as it can lead to absurdity because this court cannot go to the merits. It is not the duty of the court to determine whether the assembly was lawful or not. The applicants were not charged for unlawful assembly. Above all that is an arguable case for judicial review.

Having considered the submissions advanced by both parties, the question remains, *has the applicant demonstrated sufficient grounds for this court to grant leave to file an application for prerogative orders?*

Application for prerogative orders as per the chamber summons, has been preferred under section 2(3) of the Judicature and Application of Law, Act Cap 358 RE 2019, section 19(1) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act Cap 310 RE 2019

(herein in after ***the Act***) and Rule 5 (1), (2), (5) and (6) and Rule 7 (1) and (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 GN No. 324 of 2014 (herein after ***the Rules***).

As a matter of law, leave is a mandatory requisite before applying for prerogative orders of certiorari and mandamus as provided for under Section 2(3) of the Judicature and Application of Laws Act, Cap 358 RE 2019, Section 19(1) of ***the Act*** and Rule 5(1) (2) (5) and (6) and Rule 7(1) of ***the Rules***.

It is at this stage the court satisfy itself on the existence of an arguable case justifying the application for prerogative orders. It is the opportunity for the court to satisfy itself whether the applicant has sufficient interest on the matter and that the matter is filed within six months of the impugned decision. These conditions are set in **Emma Bayo v The minister for Labour and Youths Development and Another**, Civil Appeal No. 79 of 2012, CAT at page 8 and the case of **Salaaman Health Services v Tanzania Insurance Regulatory Authority & 3 Others**, Misc. Cause No 29 of 2022, H.C.(unreported) cited by Mr. Nassoro.

The impugned decision which has a signature of the 1st applicant as well submitted by Mr. Nassoro, was made on 4th October 2022. The dispute on the signature and lack of formal decision by the second respondent is a matter in controversy as per the filed documents. It will be resolved during hearing of the main application. Suffice to say that this application was filed on 24th October 2022. The application is within time.

Similarly, the applicants have also shown interest in the matter because as per the affidavit, the Applicants jointly constructed the mosque, madrassa and the house for the purpose of the Islamic faith. The worshipers decided to stop teaching services of Ustaadh Hussein Ally Kingwana. It is the decision which moved the 1st respondent to close the mosque for want of registration. The Applicants averred that they formed the organization called AL MARKUZUL ISLAMIYA LIL IITISWAAMIL MUSLIMIIN (MIIM) which is at the registration stage. I therefore find that the Applicants have established sufficient interest in the matter as they were personally affected.

Additionally, there is existence of an arguable case or *prima facie case* for the reason that the decision sought to be challenged made the applicants fail to run their business. It shows there is an arguable case worth granting leave. At leave stage this court cannot deal with the merits

of the intended application for *certiorari* and *prohibition* by evaluating the evidence. The allegation by the respondents on the illegal assembly as well as the allegation that the applicants are illegal leaders and the appointment of interim committee, raises a serious issue worth consideration by this court. There and then, the court will determine whether there was "excess or lack of jurisdiction" by a public body. In other words, leave is grantable as a step to challenge authority of a public body. That was also stated in the case of **Lausa Alfani Salum & 116 Others v. Minister for Lands Housing and Urban Development and Natural Housing Corporation** [1992] TLR 293,296 (HC).

In the upshot, I grant leave to the applicants to file prerogative orders of certiorari and prohibition as prayed for in the chamber summons. Application is hereby granted with no order for costs.




M. G. MZUNA,
JUDGE.

17/03/2023