

IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CAUSE NO. 04 OF 2023

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

AND

**IN THE MATTER OF THE DECISION OF THE NATIONAL
CONGRESS OF THE NATIONAL CONVENTION FOR
CONSTRUCTION AND REFORM MAGEUZI (NCCR
MAGEUZI) EXPELLING THE APPLICANT FROM THE
RESPONDENT**

AND

**IN THE MATTER OF THE DECISION OF THE NATIONAL
CONGRESS OF THE NATIONAL CONVENTION FOR
CONSTRUCTION AND REFORM MAGEUZI (NCCR
MAGEUZI) REMOVING THE APPLICANT FROM THE
POSITION OF THE NATIONAL CHAIRPERSON OF THE
RESPONDENT**

BETWEEN

JAMES FRANCIS MBATIA ----- APPLICANT

AND

**THE REGISTERED TRUSTEES OF NATIONAL
CONVENTION FOR CONSTRUCTION AND
REFORM MAGEUZI (NCCR – MAGEUZI) -- RESPONDENT**

R U L I N G

10th March & 21st March, 2023.

MGONYA, J.

By way of Chamber Summons accompanied by an affidavit sworn by one **JAMES FRANCIS MBATIA** and the Statement, the Applicant herein, filed this Application seeking among others leave to file an Application on Prerogative Order of **Mandamus, Certiorari** and **Prohibition** against the Respondent. The Application is made under section **17(2)** and **section 19 (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 R.E 2019]**; and **Rule 5(1) (2) (3) and (6) and of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, GN NO. 324 OF 2014).**

While responding to the Application above by way of Counter Affidavit, the Respondent herein filed a Notice of preliminary objection to the effect that ***the suit is premature***

for failure to exhaust available remedies in line with section 8D (1) of the Political Parties Act, CAP 258 R.E 2019 and Article 22 (3) (j) of the Constitution of NNCR-MAGEUZI, 8th Edition of 2020.

The preliminary objection was disposed orally where by the Applicant was represented by Mr. **Hudson Mchau, Learned Advocate** and the Respondent was presented by **Mr. Hassan Ruhanywa, learned Advocate.**

Arguing for the preliminary point of objection, Mr. Ruhanywa, at its outset submitted that preliminary objection must be of a pure point of law from the statute. That the base of objection is on **Section 8 D (1) of the Political Parties Act Cap. 258** which directs the Constitution of the Political Party to provide for matters indicated in 1st scheduled of the said Act. Further that, **Section 8 D (1) para (f) & (g)** of the said **Political Parties Act** directs Political Parties to have internal machinery of exhausting disputes when arise. That this has been directed also in the case of **CHEAVO JUMA MSHANA vs BOARD OF TRUSTEES OF TANZANIA NATIONAL PARKS & 2 OTHERS in Misc. Civil Case No. 7/2020;** which underscored that, when a person seeking leave for Judicial Review, is that there must be no any other/more remedy available for the same.

He further submitted that the Applicant's Affidavit in particular **paragraph 12**, states that he has exhausted all available remedies but does not state what the Applicant did in exhausting the said remedies. That the Constitution of NCCR MAGEUZI, **Article 22 (3) (j)** provides for National Congress to hear an aggrieved party who is not satisfied by other organs within the Party. Further that, the Applicant has not shown or made any effort within the party to make either an Appeal or object the decision made, and instead has come straight to knock the doors of this Honourable Court for leave to file Judicial Review. The Counsel for the Applicant referred this court to the case of ***HALIMA JAMES MDEE & OTHES VS THE REGISTERED TRUSTEES OF CHAMA CHA DEMOKRASIA NA MAENDELEO (CHADEMA) AND OTHERS, MISCL. CAUSE NO. 27/2022*** at page 31 paragraph 2 where this Honourable Court insisted on exhausting available remedies.

Mr. Ruhanywa further insisted that, the Applicant has not exhaust other local remedy of which are local and non-statutory found at the **NCCR Constitution**.

He Concluded that since Applicant has not exhausted the remedy available in their Constitution, he is to be ordered to go back and exhaust the available remedies before coming to this Honourable Court.

In response, Mr. Mchau, Learned advocate for the Applicant stated that this matter is an Application for leave and not a suit as being raised by the Respondent's Counsel. That **Section 8 D (1)** of the **Political Parties Act and Article 22(3) (j) of NCCR MAGEUZI Constitution** are inapplicable to the advanced preliminary objection.

He averred that **Section 8 D (1)** provides for contents of Constitution of the Political party in relation to the 1st schedule which includes paragraph **(f)** and **(g)**. That the said paragraph provides only for **disciplinary** mechanism and **dispute resolution** in respect of interparty dispute resolution and not for available remedies as suggested.

He conceded that Application for Judicial Review should precede with the Application for leave and should not be granted unless the Applicant has exhausted all available remedies. He mentioned the remedies to be Review, Appeal, Revision, Reference as a matter of practice in Judicial system of Tanzania. However, he insisted that in the present matter, the Applicant has no alternative remedies, but to come to this Honourable court for the prayers sought.

With regard to the submission that the Applicant could refer his complaint/ appeal to the **National Congress of NCCR as per Article 22(3) (j)** of the **NCCR Constitution** which it

has power to hear the Appeals, Counsel submitted that in paragraph 7 of the Applicant's affidavit, the Applicant's claim is against the highest Organ of the Respondent (the National Congress) by expelling him from the Respondent as a Member and from the position of the Chairperson of the Respondent. The fact which appears in paragraph 7 of the Applicant's Affidavit, and duly admitted in paragraph 8 of the Respondent's Counter Affidavit.

Mr. Mchau further elaborated further that; **Article 22(3)(j)** cited above is used when the decision is from the **National Executive Council of NCCR MAGEUZI**. With that regard, he insisted that the Applicant had no any available remedy from the Respondent. He referred this court to **Article 10(4)** of the Respondent's Constitution which provides for the rights of Appeal for a Member to the Highest Organ. But the Highest Organ in this case is the **National Congress**.

And the decision of which is subject for to be challenged is from the decision of the **National Congress** of the Respondent meaning **Mkutano Mkuu wa Taifa wa Chama** of which is the Highest Organ of the Respondent, so one cannot appeal within the party from its decision. So, from the same, there is no any available remedy for the Applicant against the Respondent's decision. That as per **Article 14 (2) of NCCR Constitution**,

the decision of the Respondent is one of the Highest degree, so there is no any available remedy of Appeal or otherwise for the given circumstances.

The Respondent's Counsel further agreed with the principles founded in the case of **CHEVO JUMA MSHANA (Supra)** and that of **HALIMA MDEE & OTHERS (Supra)**. However, he declined to subscribe to the above case on the account that in this matter the Applicant has no alternative remedy available.

Further the case of **JULIUS RICHARD RWEYONGEZA AND UNIVERSITY OF DSM & 2 OTHERS – Revision No. 136/2020, specifically at page 7**, which requires the Applicant to exhaust the available remedy, however, in the present matter there is none.

In finality Mr. Mchau prayed the point of preliminary objection be overruled for lack of merit.

By way of Rejoinder, Mr. Ruhanywa submitted among others that remedy it is a matter of substance, that the National Congress can Review and Revise its own decision considering that remedy is a matter of substance and not form. This is seeming in **Article 22(3) (n)** of NCCR Mageuzi. That paragraph entails that the National Congress has mandate to review and revise its decisions.

In respect of **Article 22(3) (n)** Mr. Mchau responded that this Article is irrelevant and there is no anywhere in this Article where states about Review and Revise of Congress decision. Therefore Mr. Ruhanywa has misconceived this matter. He insisted that **Article 10(4)** and **Article 14(2)** of the Respondent's Constitution provides the relevant remedies, and that **Article 22(3) (n)** is not applicable and the same is irrelevant.

Having heard from both Parties, the main issue here for determination is whether the preliminary point of objection has merits.

As pointed out by both Counsel and cited cases, that it is trite law that before a party seek for Prerogative Orders, he must exhaust local remedies.

I have gone through the prayers of the Applicant in the Chamber Summons of this Application and paragraph seven (7) of the Affidavit in support of the Application. The Applicant herein is complaining against the decision of the 1st Respondent dated **24th September, 2022** made through its **National Congress** in which it resolved to *detach* the Applicant herein from his position as the **National Chair Person** of the Respondent and *expelled* the Applicant from the Membership of the Respondent. Therefore, the intended decision to be

impugned through Judicial Review is that of the 1st Respondent made through its **National Congress dated 24th September, 2022.**

Mr. Ruhanywa has submitted that the Application is immature as the Applicant has not exhaust local remedies which he mentioned while re-joining that is **review** and **revision** of the Congress decision by referring to **Article 22(3) (n)** of the Respondent's Constitution.

I have gone through **Annexure JFM-7** to the Applicant's affidavit, which is the Constitution of the Respondent in **Article 22(3) and (n)** which indicates that the decision of the National Congress is final but does not relate with the circumstances in the present application where the decision has been made by the Congress itself. Therefore, it is not applicable

The said provisions read,

22. Nation,

(3) The function of the National Congress: -

a) N/A

b) N/A

c) N/A

d) N/A

e) N/A

f) N/A

g) N/A

h) N/A

i) N/A

j) Hearing and making a final decision on appeals originating from decisions of the National Executive Committee (Halmashauri Kuu ya Taifa)

k) N/A

l) N/A

m) To remove from service/office/position as suggested by the National Executive Committee, any leader for a vote of more than a half of all members attended in its meeting.

n) To make a final decision on any matter concerning the party which has not been mentioned in the Constitution

o) N/A

Going through **Article 22(3) (n)** above it is clear as a day light that nowhere is providing for remedies of **review** or **revision** of its own decision of the National Congress as suggested by Mr. Ruhanywa. And **Article 23 (3) (j)** cited above is applicable when the impugned decision is made by the

subordinate organs that is National Executive Committee, but in the present matter intended decision to be challenged was made by highest body of decision making, that is the **National Congress** itself, therefore is not applicable.

The decision of the National Congress was made under **Article 22 (3) (m)** above and does not stipulate the mechanism of challenging the said decision for a person who is aggrieved with.

However, **Article 14 (2) and 16 (6)** of the Respondent's Constitution reflect that the National Congress is the Highest Body of decision making of the Respondent among others by looking at the hierarchy structure of its meeting and its Powers to hear Appeals from subordinate meetings. Therefore, the Applicant herein could not challenge the decision of the Congress **as the same was final**. And for that reason, the only remedy available to the Applicant to challenge the decision of the National Congress is through **Judicial Review**.

Section 8 D (1) of the Political Parties Act and paragraphs **(f) and (g)** to **its 1st schedule**, are irrelevant here as they just provide a requirement of any Constitution of Political Party to contain some important matters like dispute resolution. It does not stipulate for alternative remedies. And in addition, the Applicant, herein is challenging the legality of the decision of the

Respondent and not the legality of its Constitution. Therefore, it is irrelevant in this application.

All being said, I find that **the preliminary objection raised has no merits, and is hereby overruled.** Consequently, hearing of the Main application to proceed accordingly.

Costs in due cause.

It is hereby ordered.




L. E. MGONYA

JUDGE

21/03/2023

COURT:

Ruling delivered in the presence of Mr. Hardson Mchau, Advocate for the Applicant, Hassan Ruhanywa, Advocate for the Respondent, and Magreth Kanyagha RMA on this 21st day of March, 2023.




L. E. MGONYA

JUDGE

21/03/2023