

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

MISC. CIVIL APPLICATION NO. 47 OF 2022

**In the matter of Application for leave to apply for orders of
certiorari**

**In the matter of the Decision of the Permanent Secretary,
Ministry of Home Affairs**

BETWEEN

EX. F.6673 PC. MATHEW ANTONY MLEWA.....APPLICANT

AND

THE PERMANENT SECRETARY,

MINISTRY OF HOME AFFAIRS

THE ATTORNEY GENERAL

.....RESPONDENTS

RULING

01st March & 17th March, 2023

MDEMU, J:.

The Applicant is seeking leave to apply for orders of Certiorari against the Respondents. The application is by way of chamber summons under the provisions of Rule 5 (1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review and Procedures and Fees)

Rules, 2014 GN. No. 324 of 2014). The application is supported by affidavit sworn by the Applicant and resisted by the Respondents through counter affidavit sworn by Mr. Berious Bernard Nyasebwa.

Briefly, the Applicant was employed by Tanzania Police Force as a Police Constable as from 30th of August 2004. On 16th February 2016 was charged with disciplinary offences contrary to the Police Force and Auxilliary Services Act, Cap. 322. On 11th June 2016, Dodoma Regional Police Commander found him guilty as charged and terminated him from service. He appealed to the Inspector General of Police on 14th June 2016 who, on 06th March, 2017, upheld the decision of the Regional Police Commander. On 09th March, 2017 the Applicant applied for revision of the decision by Inspector General of Police. It was dismissed. He lodged a complaint to the Permanent Secretary of the Ministry of Home Affairs. The complaint was fruitless as the said Permanent Secretary upheld the decision of the Inspector General of Police. He was further aggrieved by that decision thus applied for leave to apply for orders of certiorari and mandamus vide Miscellaneous Cause No. 18 of 2020 which was struck out for being incompetent. He filed an application for extension of time to apply for leave for orders mandamus via Misceleneous Civil Application No. 50 of 2021, the same was granted on 08th July, 2022, hence this application.

When the application was set for hearing, the Applicant was represented by Mr. Francis Kesenta, Learned Advocate, whereas the Respondents were jointly represented by Mr. Camilius Ruhinda, Senior State Attorney. By parties' consent, the application was heard by way of written submissions.

Submitting in support of the application, Mr. Kesanta submitted that, there is arguable case which the Applicant intends to argue in case leave is granted. He said, the decision to be challenged is tainted with irregularities, illegality and irrationality; namely **one**, the allegation of failure to charge motor vehicle, receive bribes, failure to give receipts of the alleged charged motor vehicle and failure to submit collected fines within certain time were not proved. **Two**, search and inspection of applicant's vehicle was unlawful as there was no neutral party at the time of search or inspection and certain inspection was done in Applicant's absence. **Three**, the decision was biased as it contained extraneous fact. **Fourth**, the conviction and termination of Applicant's employment based on alleged weakness of Applicant's testimony instead of basing on the strength of the prosecution.

Supporting his submissions, Mr. Kesanta cited the case of **Ema Bayo vs. The Minister for Labour**, Civil Appeal No. 79 of 2012

(unreported). He therefore, prayed the Court to grant leave for the Applicant to file substantive application.

In reply, Mr. Ruhinda adopted Counter affidavit to be part of his submissions and submitted that, the Applicant has not demonstrated if there is arguable case and also has not acted promptly and has failed to show want of alternative remedy available before resorting to judicial review. He said that, the Applicant has failed to elaborate on the complained illegality, irrationality and irregularity of the decision subject to this application. He said further that, the first Respondent is neither a disciplinary authority nor an appellate authority of the Applicant as alleged in paragraph 17 of the affidavit, rather, what he did was merely responding to the complaints placed before him by the Applicant. He said therefore, the appeal procedure was to be followed by the Applicant. To support his argument, he cited the case of **Republic vs. Director General of Directorate of Criminal Investigation and Another**, Misc. Application No. 535 of 2016 (unreported).

He argued further that, the case of **Emma Bayo**(supra) cited by the Applicant is distinguishable because in the cited case, the Applicant sufficiently demonstrated an arguable case, while in the present case, there is no arguable case to warrant the granting of leave to apply for

judicial review. He therefore prayed the Court not to grant leave as prayed for by the Applicant.

In rejoinder, Mr. Kesanta submitted that, the issue as to whether the first Respondent is neither a disciplinary authority nor an appellate authority is not an issue to be determined at this level of leave. He said that, the same will be dealt with in the substantive application for judicial review where the Applicant will explain as to why he is challenging the decision of the first Respondent. He also said that, the Respondents have not cited any provision of law showing whether or not the first Respondent is or is not the disciplinary or appellate authority of the Applicant.

Having considered the competing arguments for and against the application, the issue to be determined is whether this application qualifies the test of granting leave for orders of certiorari as prayed for.

The law is settled to the effect that, an application for prerogative orders in High Court must be preceded by application for leave, which if granted, will be followed by the substantive application for prerogative orders. See the case of **Attorney General vs. Wilfred Onyango Mganyi @ Dadii and 111 Others, Civil Appeal No. 276 of 2006** (unreported). It is also worth noting that, at the hearing of the application for leave, the Court must satisfy itself as to whether the Applicant has made any arguable case to justify the filing of a substantive application.

More so, the Court is required to consider whether the Applicant is within the six months limitation period and furthermore that, the Applicant has shown sufficient interest to warrant the grant for leave. The rationale behind the process is to enable the Court to exclude frivolous and vexatious applications which appears to be an abuse of court processes.

In the case of **Republic vs. Land Dispute Tribunal Court Central Division and Another** [2006] 1 EA 321, it was held that: -

"...leave should be granted, if on the material available, the Court considers, without going into the matter in depth that there is an arguable case for granting leave and that, leave stage is a filter whose purpose is to weed out hopeless cases at earliest possible time, thus saving the pressure on the Courts and needless expenses for the Applicant by allowing malicious and futile claims to be weeded out or eliminated so as to prevent public bodies being paralyzed for months because of pending court action which might turn out to be unmeritorious".

In the instant application, facts in the Applicant's affidavit and submissions thereof speaks for themselves to the effect that, the Applicant's employment was terminated following disciplinary offences he committed and the measures alleged to have been taken thereafter challenging the said actions. The Respondents challenged the application

but admitting other facts such that, the Appellant was an employee of the Tanzania Police Force and that he was terminated. They also stated that, the Applicant didn't exhaust all remedies before resorting to this application and that, the decision was not illegal, irrational and irregular since there is nowhere showing the same. The facts contained in the Applicant's affidavit speaks for themselves. In fact, the Applicant has demonstrated sufficient interests, existence of arguable case and that he has filed this application within time provided by the law. As to whether the Respondents' decision was illegal, irrational and irregular, the same are not matters for determination at this stage.

Consequently, I hereby grant the Applicant leave to apply for orders of certiorari to challenge the Respondents' decision terminating him from the Force. I do not prescribe orders as to costs.



It is so ordered accordingly.

Gerson J. Mdemu
JUDGE
17/03/2023

DATED at DODOMA this 17th day of March 2023



Gerson J. Mdemu
JUDGE
17/03/2023