

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

Date of last Order: 10/3/2023

Date of Ruling: 21/4/2023

MGONYA, J.

Applicant herein is seeking among others leave of this court to file an application for prerogative order of **Certiorari, Mandamus 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).**

The Application is supported by an Affidavit of **JAMES FRANCIS MBATIA**, the Applicant herein and is opposed by the counter affidavit of **BEATI A. MPITABAKANA**, the Chairman of

the Board of Registered Trustees of The National Convention for Construction and Reform Mageuzi (NCCR-MAGEUZI).

The gist of this matter is that, the Applicant was, among others, a Member of the Political Part registered by the name National Convention for Construction and Reform Mageuzi (hereby referred as NCCR-MAGEUZI), the National Chairman of the said Party, and was sometimes appointed and elected as a Member of Parliament through the same Party.

It is undisputed fact that on 21st, day of May 2022 the said Party convened a meeting of a National Executive Committee at Dar es Salaam and resolved to suspend the Applicant from being a Chairman of the Respondent, pending the approval of the National Congress of the Respondent. Further, on 24th September, 2022, the National Congress of NCCR- MAGEUZI convened a meeting and resolved to detach the Applicant from his position as the National Chairperson of the said Party and expelled the Applicant from the Membership of the same.

Now the complain of the Applicant is pegged on the fact that he was illegally and unlawfully removed from the position of the National Chairperson of the Respondent without adhering with the principle of Natural Justice and the decision of the National Executive Committee and the National Congress of NCCR- MAGEUZI to suspend and expel the Applicant from the

membership of the Party without affording him sufficient opportunity to be heard; is illegal.

The Application was disposed orally whereby, the Applicant enjoyed the legal services of **Mr. Hadson Mchau**, Learned Advocates while **Mr. Sungura**, who introduced himself as the acting Secretary General of NCCR MAGEUZI represented the Respondent. The submission of the Counsel for the parties are in records and are sufficiently been considered by this court and will be referred in the course of disposing this application where necessary as some of the submissions were based on merits of the Application for Judicial Review particularly that of Mr. Sungura.

At this very stage I find it essential to note that the purpose of leave application is firstly to filter out applications which are brought in court by busy bodies and secondly is to eliminate at early stage frivolous and vexatious cases as was underscored in the case of ***INLAND REVENUE COMMISSIONER AND NATIONAL FEDERATION OF SELF-EMPLOYED AND SMALL BUSINESS LTD [1981] 2 ALL ER at page 93.***

And standard for application of leave to be granted are set out in the ***INLAND CASE(SUPRA)*** as well as in the case of ***EMMA BAYO VS MINISTER FOR LABOUR & ANOTHER, CIVIL APPEAL NO. 79 OF 2012, CAT AT ARUSHA***

(UNREPORTED) that for an Application of leave to be granted by this court, the Applicant must establish the following **one;** presence of an arguable case; **two;** whether the application has been filed within a period of six months; **three;** whether the Applicant has a sufficient interest on the matter; **and four;** whether the Applicant has exhausted all applicable remedies.

While disposing this matter, I will confine myself on the content of the pleadings and see whether this application has merits. This roadmap was subscribed in the case of ***NJUGUNA V. MINISTER FOR AGRICULTURE [2000] 1 EA 184*** where it was stated that:

"The test as to whether leave should be granted to an Applicant for judicial review is whether without examining the matter in any depth there is an arguable case that the reliefs might be granted on the hearing of the substantive application."

On whether the Applicant has established a ***prima facie*** case, it was submitted by Mr Mchau, Counsel for the Applicant, of which I finds has merits as per the records of this court, that the Applicant has a arguable case against the Respondent as demonstrated in **paragraph 9,10, and 11** of his affidavits in whereby the Applicant has complained among others that before

making decision against him, he was not afforded right to be heard which is against the principle of Natural Justice.

Again, through **Part C, item 1 (a)(b) (c) and (d) of the Applicant's Statement** has pointed out that there was breach of principle of Natural Justice and therefore has established that there is an arguable case as right to be heard is paramount when dealing with rights of an individual as was emphasized in the case of ***MBEYA-RUKWA AUTOPARTS and TRANSPORT LTD VS JESTINA MWAKYOMA [2003] TLR 251, SELCOM GAMING LIMITED VS GAMING MANAGEMENT (T) AND GAMING BOARD OF TANZANIA [2006] T.L.R 2000 and MIRE ARTAN ISMAIL AND ANOTHER VS SOFIA NJATI, Civil Appeal No 75 of 2008 (unreported).***

Further I find that the Applicant has established a ***prima facie*** case in **paragraph nine (9) of the Applicant affidavit** as the Applicant has complained about violation of disciplinary procedures by the National Congress of the Respondent when was conducting the disciplinary process against the Applicant as a Leader or Member of the Respondent under the constitution of the NCCR-MAGEUZI to wit, to be served with the charge laid against him, to be afforded right to be heard and right of appeal.

From the above, it is my view that, the first criteria for leave to file Judicial Review **has been complied with by the Applicant.**

Regarding whether this Application was filed on time, I find that this Application has been filed within time as indicated **in paragraph 7** of the Applicant's affidavit that the complained decision **was made on 24th September, 2022** and this application was filed on 13th February, 2023, which is within six (6) months as required **by rule 6 of the (Judicial Review Procedure and Fees) Rules, 2014, (GN NO.324 OF 2014).**

The submission by Mr. Sungura, who appeared for the Respondent, is that this Application was filed out of time as paragraph six (6) of the Applicant's affidavit shows that the Applicant is complaining against the **meeting held on 21st May, 2022**, has no merits as the said paragraph was there to show the sequence of events from paragraph 6 to 7, and the final decision was made on 24th September, 2023 as indicated by paragraph 7 of the Applicant's affidavit. Further, under paragraph **B** and **C** of the Applicant's Statement, the relief sought and grounds of relief refers to the decision made on **24th September, 2022. This condition too has been met.**

On whether the Applicant has sufficient interest on the matter, again, I find that **the answer is in the affirmative** as

submitted by Mr. Mchau. **Paragraph 2** of the Applicant's affidavit indicates that the Applicant was a founder Member of a Political Party registered in the name of Convention for Construction and reform -Mageuzi (NCCR- MAGEUZI) which its Registered Trustee is the Respondent herein. **Annexure 3, 4 and 5 of the Applicant's affidavit** demonstrate that the Applicant was the National Chairman and was a Member of NCCR-MAGEUZI since **1st July, 1992**, and in General Election of 1995 and 2015 he became a Member of Parliament in Vunjo Constituency. Further, in the year **2012**, through Presidential seat appointee he was a Member of Parliament after being appointed by the former President of the United Republic of Tanzania while being in the same Political Party. From all the above, there is no doubt that the Applicant has solid interest in NCCR-MAGEUZI which its Registered Trustee is the Respondent herein and he has a right to defend them.

The last criteria is on whether the Applicant has any other alternative remedy. I agree with the submission of Mr. Machau that this criterion was already settled by this court in this same matter when that he has no any other alternative remedy, **through a Ruling dated 21st March, 2023**, when the Respondent herein raised a point of objection on that aspect. Therefore, I won't waste much effort in determining this condition. The answer is that, at this point, the Applicant has no

any other remedy serve for the Judicial Review to seek for his rights.

For reasons given above, the Applicant has made his case.
I therefore grant leave to the Applicant to apply for Judicial Review within the prescribed period.

Each party has to bear its own costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya".

L. E. MGONYA

JUDGE

21/04/2023

Court:

Ruling delivered in the presence of Mr. Hardson Mchau Advocate, for the Applicant and Mr. Faustine Sungura, for the Respondent and Magreth Kanyagha RMA on this **21st day of April, 2023.**



A handwritten signature in blue ink, appearing to read "L. E. Mgonya".

L. E. MGONYA

JUDGE

21/04/2023