

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MAIN REGISTRY)
DAR ES SALAAM**

MISCELLANEOUS CAUSE NO. 39 OF 2022

BETWEEN

FREDRICK ANTONY MBOMA..... APPLICANT

VERSUS

SERIKALI YA MTAA KIBANGU.....1ST RESPONDENT

UBUNGO MUNICIPAL COUNCIL.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

RULING

13th March 2023 & 5th May 2023

MZUNA, J.:

The applicant (above mentioned) seeks before this court for leave to file Judicial Review against the decision of the Serikali ya Mtaa wa Kibangu which refused the request to name one of the streets in his father's name Mboma a decision which was made on 20th February 2022 as well stated under paragraph 3 of the affidavit. He moved this court under Rule 5(2) of Law Reform (Fatal accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 (herein after, **the Rules**) and Section 84A of the Interpretation of Laws Act, Cap 1 RE 2019. The application is by chamber summons supported by sworn affidavit of the applicant and statement.

*"...It is at the stage of leave where the High court satisfies itself that the applicant for leave has made out **any arguable case** to justify the filing of the main application. At the stage of leave the High court is also required to consider whether the applicant is **within the six months limitation period** within which to seek a judicial review of the decision of the tribunal subordinate to the High court. At the leave stage is where the applicant shows that he or she has **sufficient interest** to be allowed to bring the main application. These are the preliminary matters which the High Court sitting to determine the appellant's application for leave should have considered while exercising its judicial discretion to either grant or not to grant leave to the applicant/appellant herein."*

(Emphasis mine)

In other words, there must be established the following conditions; **One**, the applicant must demonstrate that there is an arguable case, that a ground for seeking judicial review exist. **Two**, the applicant has to show sufficient interest in the matter to which the application relates. **Three**, the applicant has acted promptly. **Four**, the applicant has to show that there is no alternative remedy available.

Starting with time limitation, the order sought to be challenged was made on 20th March, 2022. The respondents did not challenge issue of time limitation. The applicant has submitted and I think rightly so, that the application is within time. It is an undeniable fact that he filed this application on the 5th, August 2022 and therefore within time. I am

convinced that the application is well within time. The applicant acted promptly.

In regard to the interest in the matter. It is not in dispute that he sought for the name of his father to be mentioned as one of the Street names because he happened to reside there. This can also be seen under page 4 of OSG 1 titled Muhtasari wa Mkutano wa Wananchi wa Mtaa wa Kibangu of 20/3/2022.

On account of this fact, Ms. Rose Kashamba, the learned State Attorney strongly challenged the existence of interest in the matter. She referred to rule 4 of the Rules on who can apply for judicial review. The person must be affected directly. But the applicant wanted to speak on behalf of his father. That he ought to have filed a representative suit. I entirely agree with her on this point. The applicant's father is the one who ought to have lodged this application not the applicant. He has no interest in the matter even if he resides there.

The next point for consideration is whether there is an arguable case?

The applicant's view is that there is an arguable case because he was denied chance to give his opinion in the general assembly meeting.

The applicant stated in his affidavit under paragraph 5 that there was wrong interpretation of the "Mwongozo wa Mfumo wa anwani za makazi" mentioned under paragraph 4 of his affidavit.

That, there was violation of natural justice in that he was denied the chance to give his opinion during the general meeting. He referred to the case of **Halima James Mdee & 18 Others v. The Registered Trustees of CHADEMA & 2 Others**, Misc. Cause No. 27 of 2022, High Court, Main Registry (unreported).

He made further reference to the respondents' reply where they denied that the applicant had never requested for the documents but denied same contrary to annexure OSG 1 page 11 paragraph 7. He therefore, request this court to grant leave and an order to stay the process of naming the street.

On her part, the learned State Attorney insisted that all the procedures were followed and all parties did participate. It was agreed that no individual name should be used to name the streets unless he has done something commendable like offering a plot for building school, mosque etc, as well shown in the minutes of the meeting. The name of the applicant's father was proposed but denied by the villagers. The

participants set the criteria for naming of a person to the street. The applicant was given a chance to be heard but his proposal was refused.

Regarding the denial to be given the documents which he requested, she responded that not all the documents are issued to the villagers. The directives can be accessed through the internet pursuant to section 36 of Local Government Urban Authorities Act, Cap 288 RE 2002.

It was therefore her strong view that the Applicant has no arguable case because the process of naming the streets has already been closed, it cannot be stayed at this moment. Therefore, this application should be dismissed.

In the rejoinder, the Applicant reiterated his submissions in chief.

Having considered the submissions from both parties, *the question remains, has the applicant demonstrated an arguable case?*

Reading from the above submission, I tend to agree with the learned State Attorney that it is not true that the applicant was denied the right to be heard. The filed documents, OSG1 clearly shows that he was heard but his request was denied. There was given cogent explanation for refusal to allow his request as well explained by the learned State

Attorney. I quote the excerpts from OSG1 "Taarifa ya zoezi la upatikanaji wa majina ya Barabara na njia Mtaa wa Kibangu". It reads:-

"Katika Mkutano ndugu Fredrick Mboma alirudisha hoja ya kwamba barabara ipewe jina la Baba yake na wananchi wakaikataa hoja yake kwa vile hawakuwa na kumbukumbu ya jambo lolote ambalo amelifanya..."

The street which was referred to was called "**Mwembe**". A request to change it to that of his father's name "**Mboma**" was refused.

The requirement for existence of an arguable case was insisted in the case of **Republic V Land Dispute Tribunal Court Central Division and Another** [2006] 1 EA 321. The court 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 expense for the applicant by allowing malicious and futile claims to be weeded out or eliminated so as to prevent public bodies being paralysed for months because of pending court action which might turn out to be unmeritorious."

(Underscoring mine).

Applying the principles above, the Applicant has not satisfied the criteria set out in **Republic V Land Dispute Tribunal Court Central**

Division and Another (Supra). Even the cited case of **Halima James Mdee & 18 Others v. The Registered Trustees of CHADEMA & 2 Others**, (supra) which was cited to derive a point that there is a prima facie case and an arguable case, is distinguishable.

At most the applicant can be described as a “busy body” with no interest in the matter. This can also be seen under paragraph 8 of the respondent’s reply statement to his paragraph 4 of his statement that:-
“...ni maelezo anayoyajua mwombaji yeye binafsi ...maelezo hayo hayahusiani kabisa na madai ya mleta maombi...yanaongelea masuala tofauti kabisa na hayahusiani na uwekaji wa anuani za makazi.” He was talking about sewage collection and its fees as well as copy of the levy collection of Kibangu street which as above noted, has no connection with the codification of the streets with names.

Even assuming that point is anything to go by, still the sought order of stay in the naming of street exercise, in view of Ms. Kashamba, that process is completed. There is no way it can be reviewed especially so because there is no arguable case to fault a decision of the judicial body.

That being the case, the application for the order of stay cannot stand given the fact that no materials upon which leave can be granted.

In the circumstances, this application does not meet the required factors for the grant of leave. The same stands dismissed with costs.



DATED at Dar es Salaam, this 5th day of May, 2023.

A handwritten signature in black ink, appearing to read "M. G. MZUNA".

M. G. MZUNA,

JUDGE.