

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(MAIN REGISTRY)
AT DAR ES SALAAM**

MISCELLANEOUS CAUSE NO. 20 OF 2023

**IN THE MATTER OF AN APPLICATION FOR PREROGATIVE ORDERS OF
CERTIORARI AND MANDAMUS**

**AND
IN THE MATTER OF DISMISSAL FROM EMPLOYMENT OF DR. PETER
NANIYO PHISSOO**

BETWEEN

DR. PETER NANIYO PHISSOO.....APPLICANT

VERSUS

**THE EXECUTIVE DIRECTOR
BAGAMOYO MUNICIPAL COUNCIL.....1ST RESPONDENT
THE CHAIRMAN PUBLIC SERVICE COMMISSION.....2ND RESPONDENT
THE CHIEF SECRETARY.....3RD RESPONDENT
THE ATTORNEY GENERAL.....4TH RESPONDENT**

RULING

20 June & 21 June, 2023

KAGOMBA, J.

This is a ruling in respect of application for leave to apply for orders of *certiorari* and *mandamus* against the decision of the President through the 3rd respondent which was communicated to the applicant on 25th July, 2021 confirming the decision of the 1st Respondent dated 29th November, 2019. The applicant also prays for any other order(s) or

relief (s) this court may deem fit and just to grant, plus costs of the application.

The application is made by way of chamber summons under Rule 5(1),(2)(a)(b)(c) and (3) accompanied by an affidavit sworn by the applicant together with the statement of facts.

When the matter was scheduled for mention, Mr. Elias Mwengwa, learned State Attorney for the respondents, informed the court that having read the applicant's affidavit the respondents had decided not to oppose the application for the reason that the same has met all the three essential criteria for granting leave to file an application for judicial review.

He said that through the affidavit it is revealed that the applicant has interest in the matter, he also has an arguable case and the application is made within prescribed time. He therefore urged the court to grant it to enable the applicant file for judicial review where the matter will be heard on merit.

Mr. Ramadhani Maleta, the learned advocate who appeared for the applicant had nothing to oppose. Without any further ado he prayed the court to grant the application.

However, despite of the fact the application is uncontested, this court has to discharge its filtering duty, at this stage, by satisfy itself if the applicant's application is meritorious and meets the requirements of the law. The guidance on these requirements is to be found in **Emma Bayo vs Minister for Labour and Youths Development & 2 Others**, Civil Appeal No. 79 of 2012, CAT, Arusha, where the Court of Appeal held that:

*"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 a 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 added]

I have perused the application in the light of the criteria highlighted in above. Indeed, as rightly stated by Mr. Mwengwa, the applicant has shown sufficient interest in the matter. He has shown by affidavit that he is the one who was dismissed from employment on 29th November, 2019, the decision he is aggrieved with.

The applicant has also raised an arguable case as to whether he was afforded his right to be heard by the respondents. An allegation of denial of right to be heard is a serious one and once raised it needs to be investigated. (See the decision of the Court of Appeal in **Laurent Simon Assenga vs Joseph Magoso and 2 Others**, Civil Application No. 250 of 2016).


And, despite the applicant earlier on being out of the six months prescribed period to file for judicial review, on 24th April, 2023 he obtained a 14-day extension of time by order of this court (Siyani, JK) in Misc. Civil Application No. 4 of 2023, which now renders this application timely.

Based on the above reasons, I am satisfied that this application has met the legal threshold for a leave to file for judicial review to be

granted. Accordingly, I grant leave to the applicant to apply for orders of *certiorari* and *mandamus* as prayed. No order as to costs.

Dated at Dodoma this 21st day of June, 2023.




ABDI S. KAGOMBA
JUDGE