

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

MISCELENEOUS CIVIL APPLICATION CASE NO. 24 OF 2023

In the matter of an application for leave to apply for an order of Certiorari,
Mandamus and Prohibition against the Respondents by Joel Runda Marivei

And

In the matter of challenging the decision of General Commissioner of
Prison being a final Appellate Authority

BETWEEN

JOEL RUNDA MARIVEI.....APPLICANT

AND

GENERAL COMMISSIONER OF PRISON.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

Last Order: 28th July 2023.

Date of Ruling: 01st August 2023.

MASABO, J:-

The applicant one Joel Runda Marivei has moved this court by a chamber summons filed under section 17(2), 18(1) and section 19(2) of the Law Reforms (Fatal Accidents Miscellaneous Provisions) Act, Cap. 310 R.E 2019 and Rule 5(1) and (2) (a) (b) (c) (d) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure and Fees) Rules 2014. He is praying for leave within which to file an application for *certiorari* for quashing and setting aside a decision of the Commissioner General for Prisons which has disgruntled him and for an order of mandamus compelling the Commissioner to reinstate him.

The application is supported by the applicant's affidavit in which the following abbreviated facts have been deponed. The applicant was employed by the Commissioner General of Prisons since 6th June 2016 and served his employer until 12th December 2022 when his employment was terminated, a termination which has aggrieved him hence the present application. In the statement accompanying the application he has averred that he intends to challenge the termination because it proceeded without affording him the right to be heard; the Commissioner General for Prisons did not act in good faith and acted on unjustified allegations.

On 27th July 2023, the applicant appeared before me, unrepresented. Called upon to address the court in support of his application, the applicant who was not represented, started to challenge the date of his termination whereby he submitted that, he was not terminated on 12th December 2022 but on 8th January 2023. He then proceeded to convince this court to grant his application so that he can challenge the termination because he was adjudged unheard and prior to his termination he was abducted, seriously assaulted while at work and in uniform. He proceeded that all these were done forcing him to quit his job. He also argued that, the reasons for his termination were not proper since he was working well and was promoted which shows that his performance was in good order else, he would not have been well appraised and promoted. He also added that his termination was instigated to silence him as he was vocal and through his good deed and patriotism, he saved a lot of government money which could have been lost or misappropriated by his superiors. Because of this, even before his

termination, he was forcefully evicted from the house occupied by him and same was allocated to other servants while he was still under custody. This marked the end of his submission.

Rule 5(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 prescribes leave as a precursor for applications for judicial review. It states that an application for judicial review shall not be made unless a leave to file such application has been granted by this court. A person intending to file an application for judicial review is thus required by law to apply for leave. Invariably, this application which is the first stage of judicial review is made *ex parte* to a Judge and may be granted if the court is satisfied that the applicant has demonstrated an arguable case and that leave has been sought within the time limit of 6 months set out under rule 6 the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. Expounding on applications on the factors for consideration by court when determining such applications, the Court of Appeal in **Emma Bayo vs. The Minister for Labour and Youths Development and Others**, Civil Appeal No. 79 of 2012 [2013] TZCA 190 (TANZLII) instructively stated that:

It is 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 applicant'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.

In the light of this authority, I have carefully considered the applicant's submission alongside the affidavit and the statement bracing his chamber summons which I have thoroughly examined. Starting with the issue whether an arguable case has been demonstrated, I am convinced that, in deed, through his affidavit and annextures, the applicant has ably demonstrated that there is an arguable case calling upon the attention of this court to determine whether, his termination proceeded procedurally and in specific whether, prior to his termination, he was afforded the right to be heard.

With regard to the time within which the application was made, the present application was filed in court 13th June 2023. As the letter terminating the applicant from employment appears to have been written on 12/12/2022, it would appear that the application was filed slightly out of time. In his submission, the applicant has argued that much as the letter shows that he was terminated on 12th December 2022, that is not the actual date of his termination as his termination was on 8th January 2023, not otherwise. Much as this date does not coincide with the one in his affidavit and much as it is trite that the applicant be bound by his pleadings, I am not inclined to reject his argument. Having scrutinized the letter, I have found it to reflect what has been submitted by applicant because much as it was written on 12th

December 2022, it bears an endorsement showing that it before being furnished to the applicant, it was transmitted to the Regional Prisons Officer who endorsed it on 6th January 2023 and thereafter transmitted it to the Officer in charge of Msalato Prison on 7th January 2023, which means that it was furnished to the applicant after this date. When the period for accrual of right is computed from this date, it follows that indeed, when the applicant filed the present application on 13th June 2023, he was well within time.

On the strength of the authority above and on the foregoing facts, I am of the considered view that the application passes the tests for grant of leave. Accordingly, leave for lodging an application for prerogative orders against respondents is granted to the applicants. As the application was heard *ex parte*, there are no order as to costs.

DATED and **DELIVERED** at Dodoma this 1st day of August, 2023.



A handwritten signature in blue ink, appearing to read "J. L. MASABO", is written over a circular stamp.

J. L. MASABO

JUDGE