

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

**MISCELLANEOUS CIVIL APPLICATION No. 35 OF 2023**

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

**IN THE MATTER OF THE ENTIRE PROCESS BY THE 1<sup>ST</sup> RESPONDENT  
DELETING THE APPLICANT FROM THE REGISTER AND THE SAME  
COMMUNICATED TO THE APPLICANT ON 14<sup>TH</sup> MARCH, 2023**

**BETWEEN**

**CHAMA CHA USHIRIKA CHA AKIBA NA MIKOPO  
CHA ARUSHA SOKO KUU ..... APPLICANT**

**AND**

**TUME YA MAENDELEO YA USHIRIKA ..... 1<sup>ST</sup> RESPONDENT  
MWANASHERIA MKUU WA SERIKALI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

23<sup>rd</sup> August & 29<sup>th</sup> September, 2023

**TIGANGA, J.**

This applicant under certificate of urgency has filed this application praying for leave to apply for orders of Certiorari and Mandamus under section 2 (3) of the **Judicature and the Application of Laws Act** [Cap. 358 R.E. 2019], section 17 (2), 18 (1), (3) and 19 (2) of the **Laws Reform (Fatal Accidents and Miscellaneous Provision) Act**, [Cap 310, R.E. 2019].

Before the application was heard on merit, the respondents raised the following points of preliminary objection;

1. That, the Application is hopelessly time barred as per rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provision (Judicial Review Procedure and Fees) Rules, GN No. 324 of 2014.
2. That, the Application is premature for the applicant's failure to exhaust available remedy as provided under section 101 (1) of the Cooperative Societies Act, Act No. 6 of 2013.
3. The, Applicant has no locus standi to file this suit as its registration has already been cancelled since 12<sup>th</sup> August 2022.
4. That, the Application is incompetent and bad in law for contravening with rule 5 (2) (a), (b,) and (c) of the Law Reform (Fatal Accidents and Miscellaneous Provision (Judicial Review Procedure and Fees) Rules, G.N. No. 324 of 2014

During the hearing of the objection, the applicant was represented by Mr. Edmund Ngemela, learned Advocate whereas the respondents were jointly represented by Ms. Zamaradi Johannes, learned State Attorney. The application was heard by way of written submission.

Supporting the 1<sup>st</sup> objection, Ms. Zamaradi submitted that, Rule 6 of GN No. 324 of 2014 provides for a specific period i.e. six months within which the application for leave to apply for leave to apply for Judicial Review. She argued that the applicant's registration was cancelled on 12<sup>th</sup> August 2022 and they were notified by the letter dated 9<sup>th</sup> September

2022. However, this application was filed on 31<sup>st</sup> March 2023 after the lapse of an extra 47 days as the same was to be filed on 12<sup>th</sup> February 2023.

On the 2<sup>nd</sup> objection, learned counsel submitted that, this application is premature as the applicant failed to exhaust all available local remedies provided under section 101 (1) of the Cooperative Societies Act, Act No. 6 of 2013. She asserted that, according to such a section, the applicant ought to have appealed to the Minister before resorting to the Court. She referred the Court to the case of **Parin A.A. Jaffer & Another vs. Abdulrasul A. Jaffer & 2 Others** [1996] TLR 111 which emphasized the importance of exhausting all remedies before resorting to the Court.

Regarding the 3<sup>rd</sup> objection, she submitted that the applicant has no *locus standi* to file this suit as her registration has already been cancelled since 12<sup>th</sup> August 2022. That, the same has ceased to exist since then. As to the last objection, Ms. Zamaradi submitted that this application is bad in law and contravenes rule 5 (2) (a), (b,) and (c) of G.N. No. 324 of 2014 as the same lacks the Statement of the application. She prayed that the same be dismissed with cost.

In reply, Mr. Ngemela submitted in the 1<sup>st</sup> ground that, the applicant got information of the deletion of her registration through a letter dated

14<sup>th</sup> March, 2023. Rule 6 of G.N. No. 324 cannot be read in isolation with section 100 (2) of the Cooperative Society Act which requires the whole process of cancellation to be gazetted with proper notification. Since the applicant immediately filed this application after notification of the cancellation, she is within time.

On the 2<sup>nd</sup> objection, he submitted that section 101 of the Cooperative Society Act does not oust the jurisdiction of this Court from hearing this application. That, the cancellation was a result of ill will by one Emmanuel Sanka who was sued by the applicant. Thus, exhausting the remedy prescribed in the Act while the one who engineered the cancellation is in the decision-making would not solve anything.

On the 3<sup>rd</sup> objection, Mr. Ngeniela submitted that the applicant has *locus standi* because according to section 4 of the Law Reform Rules, any person who has an interest and believes to be adversely affected by any act, may apply for judicial review. He contended that this point of objection is under scrutiny and does not qualify as a point of objection. On the last ground, he argued that this court has full discretion to grant leave upon sufficient reasons. The chamber summons and its affidavit filed has all the requirements needed in this application. He prayed that all the preliminary objections raised be overruled with cost.

In her rejoinder, Ms. Zamaradi briefly reiterated her submission in chief and added that, the applicant was notified of the deletion of her cancellation through a letter dated 9<sup>th</sup> September 2022. The same was gazetted in the Government Gazette No. 32 dated 12<sup>th</sup> August 2022. She insisted that, this application be dismissed with cost.

After rival arguments for and against the points of objection raised, the only question for determination is whether the same have merit. Starting with the 1<sup>st</sup> objection, rule 6 of the Law Reforms Rules provides as follows;

*6. The leave to apply for judicial review shall not be granted unless the application for leave is made within six months after the date of the proceedings, act, or omission to which the application for leave relates.*

In paragraph 7 and 8 of the applicant's affidavit show that she acknowledges receipt of the Notice of deletion of her registration. The same is Annexure "C" which shows that Notice was issued on 9<sup>th</sup> September 2022 and the applicant stamped the same to show that it was received on 14<sup>th</sup> September 2022. This application was filed on 31<sup>st</sup> March 2023 which is after seven (7) months and 17 days hence, grossly out of time. This objection has merit and the same is sustained.

On the 2<sup>nd</sup> objection, the law is clear under section 101 (1) of the Cooperative Societies Act that, once the registration of a society is cancelled, the aggrieved party has a right to appeal to the Minister. The provision reads;

*"Where the registration of a society is cancelled under the provisions of section 100, any member of the society the registration of which is cancelled may, within thirty days from the date of the order cancelling the Registration, appeal against such order to the Minister."*

Applicant's counsel conceded to this fact, however, he argued that the same does not oust the jurisdiction of this Court. I agree with him on the aspect that, such a section does not oust the jurisdiction of this Court from entertaining this matter, however, the law is clear and the Court of Appeal decisions are one that, where there is an option of exhaustion of local remedies, the same should be adhered first before brought to Court. In the case of of **Abadiah Salehe vs. Dodoma Wine Company Limited** (1990) TLR 113 it was held *inter alia* that;

*(i) An order of mandamus is a discretionary remedy. **As a general rule, the court will refuse to issue the order if there is another convenient and feasible remedy within the reach of the applicant;***

I also like to borrow wisdom from my learned brother, Dyansobera, J. in the case of **PC Sunday Simon Mwaikwla vs. Inspector General of Police & Attorney General**, Civil Case No 29 of 2017 (Unreported) where he observed that;

*"Where there exists a statutory dispute resolution machinery vesting jurisdiction in different body governing the parties, resorting to the court before exhausting the said statutory machinery was improper and therefore, this court lacks jurisdiction to entertain the present matter."*

I find this observation highly persuasive as a result, the applicant ought to have pursued the right to appeal to the Minister responsible before knocking on the doors of the Court. This objection is also merited.

In light of the above, having determined that, the application is time-barred and prematurely brought before this Court, I see no need to continue with other points of objection. The application is dismissed with cost.

It is so ordered.

**DATED** and Delivered at **ARUSHA** this 29<sup>th</sup> day of September 2023.



  
J.C. TIGANGA

JUDGE