

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

MISCELLANEOUS CIVIL CAUSE NO. 40 OF 2023

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS
OF CERTIORARI, MANDAMUS AND PROHIBITION AGAINST THE
RESPONDENTS**

AND

**IN THE MATTER OF CHALLENGING THE DECISION OF THE PRESIDENT OF
THE UNITED REPUBLIC OF TANZANIA IN HER APPELLATE AUTHORITY FOR
CONFIRMING THE DECISION OF THE PUBLIC SERVICE COMMISSION
WHICH RESULTED IN DISMISSAL OF THE APPLICANT FROM EMPLOYMENT**

BETWEEN

PERE MUGANDA.....APPLICANT

VERSUS

**THE CHIEF SECRETARY.....1ST RESPONDENT
SIHA DISTRICT COUNCIL.....2ND RESPONDENT
THE ATTORNEY GENERAL.....3RD RESPONDENT**

RULING

03rd & 5th October, 2023

KAGOMBA, J.

The applicant herein seeks leave of this court so as to file an application for orders of *certiorari*, *mandamus* and prohibition. In craving for these orders, his ultimate aims are, respective, to have the decision of the 1st respondent which confirmed the decision of the Public Service Commission to terminate him from his employment with the 2nd respondent quashed and set aside; the respondents are compelled to act

according to the requirement of the laws, and are prohibited to interfere with his employment without following laws and procedures. He also prays for costs of this application.

The application is by way of a chamber summons made under Rule 2(1) (3) of the Judicature and Application of Laws Act, (Cap 358 R.E 2019); Section 17(2), 18(1) and 19(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act (Cap 310 R.E 2019); Rule 5(1) and (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 and section 95 of the Civil Procedure Code (Cap 33 R.E 2019). The application is accompanied by an affidavit sworn by the applicant together with his statement.

When the matter was called up for the first mention, Ms. Doreen Mhina, learned State Attorney who represented all the respondents intimated to the court that after their perusal of the application, the respondents were satisfied that the applicant has met the requirements for granting of leave. Hence, she supported the application. Mr. Isaac Tasinga, learned Advocate for the applicant readily concurred, and had nothing to add.

Under the above scenario, the duty of this court is to determine whether the application meets the legal threshold for it to be granted. In

Emma Bayo vs Minister for Labour and Youths Development & 2

Others, Civil Appeal No. 79 of 2012, CAT, Arusha, 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 read the applicant's chamber summons as well as his affidavit and statement under the guidance provided above. Apparently, the applicant holds sufficient interest in this matter which is about his dismissal from employment with the second respondent. He has

demonstrated in his affidavit that he is the very person who is a victim of the dispute between him and his superiors, based on loss of public funds.

As to whether the applicant has raised an arguable case, I would answer in the affirmative. His persistent claim has been that the decision of the second respondent to dismiss him from employment and the confirmation thereof by the President did not observe the principles of natural justice pertaining to fair hearing. He cites inadequate notice for disciplinary hearing, denial of access to vital documents, denial of sufficient time for defence preparation and proceedings being conducted by an improperly constituted committee as some of the shortfalls which, allegedly, engulfed the impugned decisions.

As stated by the Court of Appeal in **David Mushi vs Abdallah Msham Kitwanga**, Civil Appeal No. 286 of 2016 CAT DSM, the right to a fair trial is a fundamental right enshrined under Article 13 (6) (a) of the Constitution. Hence, allegation of denial of a fair hearing is a serious one and once raised the court must be alerted. Suffice to say that the applicant has met the criteria of having an arguable case. This is regardless of whether or not the said allegations will eventually be established.


And, finally, the applicant has demonstrated that despite the impugned decision of the President being dated 1st March, 2023, he

received the same in Moshi on 13th March, 2023 via post office. Within six months upon receiving the said decision, the applicant knocked the door of this court on 1st September, 2023. Hence, this application was filed in court timely.

Based on the above reasons, I am satisfied that the application has met the legal threshold for grant of a leave to file for judicial review. Accordingly, I grant leave to the applicant to apply for orders of *certiorari mandamus* and prohibition as prayed. Considering that the application has gone uncontested, I make no order as to costs.

Dated at Dodoma this 5th day of October, 2023.




ABDI S. KAGOMBA
JUDGE