

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

AT ARUSHA

MISC. CIVIL CAUSE NO. 21 OF 2023

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

AND

**IN THE MATTER OF NOLLE PROSEQUI ENTRED BY THE REPUBLIC ON 14TH
JUNE 2023, IN CRIMINAL CASE NO. 28/2022 BEFORE RESIDENT
MAGISTRATE COURT OF ARUSHA AT ARUSHA**

AND

**IN THE MATTER OF APPLICATION FOR LEAVE TO FILE APPLICATION FOR
JUDICIAL REVIEW FOR AN ORDER OF CERTIORARI AND PROHIBITION
SEEKING TO QUASH AND PROHIBIT THE ONGOING CRIMINAL
PROCEEDING IN CRIMINAL CASE NO. 87/2023 BEFORE DISTRICT COURT
OF ARUSHA**

BETWEEN

BARAKA DAUDI OGILLOAPPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION1ST RESPONDENT

ATTORNEY GENERAL2ND RESPONDENT

RULING

18/10/2023 & 25/10/2023

GWAE, J

The applicant, Baraka David Ogillo has brought this application for leave to apply for orders of Certiorari and Prohibition under section 2 (3) of the Judicature and Application of Laws Act Cap 358, Revised Edition, 2019, Section 17 (2), 18 (1) (3) of Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap 310, Revised Edition, 2002 and Rule 5 (2) & (3) of the Laws Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure) Rules, 2014.

The applicant's grounds on which this application is based for the sought leave to apply judicial review for Certiorari and Prohibition against the respondent is as follows;-

1. That, the 1st respondent's office exercise exercised their statutory powers in a manner that offends the dictates of section 91 sub section 3 of the Criminal Procedure Act.
2. That, the 1st respondent's office exercised their statutory powers in a manner that contravenes their mandate coached under the national prosecution act to do justice and prevent abuse of power.
3. That, the respondents acted malafide by using their statutory powers conferred to them by statute to fill the gaps in prosecution case than to enhance the justice needed.

According to the applicant's affidavit and its associated documents appended thereto. The factual background of the matter can be gleaned

as herein under. That, the applicant was charged and prosecuted in Criminal Case Number 118 of 2021 before the Resident Magistrate Court of Arusha at Arusha whereas on the 20th day of October 2022, the Resident Magistrate Court marked the charges against him withdrawn under section 91 (1) of the Criminal Procedure Act, Cap 20, Revised Edition, 2022 (CPA). The applicant was subsequently arrested and charged again before the same court vide Criminal Case No. 28 of 2022 with the same criminal charge, facts and evidence. Equally, on 14th June 2023 the subordinate court marked the charges against him withdrawn under section 91 (1) of the CPA. Surprisingly, on the very same date the applicant was arrested and charged again vide Criminal Case No. 87 of 2023 before the District Court of Arusha and up to the date of filing of this application no hearing of the said criminal case leveled against the applicant that has been conducted.

The applicant is aggrieved by the conducts of the respondents of repeated institutions of the same charges against him using the same particulars and for three years. He has thus filed this application seeking for leave to file an application for judicial review for an order of certiorari and prohibition seeking an order quashing and prohibiting the ongoing

criminal proceedings in Criminal Case No. 87 of 2023 before the District Court of Arusha at Arusha.

When this application was placed before me for hearing, Mr. Peter Msetti assisted by Mr. Leyani Mbise, both the learned State Attorneys and advocate Asubuhi John Yoyo appeared for the respondents and applicant respectively. This application was not contested by the respondents when the parties' represented appeared for arguing the application despite the fact that the respondents filed their counter affidavit opposing this application by stating that, there is violations of any law on the part of the respondents.

That being the position, then, what is for the court's determination is whether this application is grantable. Having carefully examined the parties' pleadings, the applicant is complaining of the conducts of the respondents of re arresting him on the same particulars of the charge and on the same evidence for three years. He laments that the conducts have seriously prejudiced him as he has been persistently blocked to smoothly conduct the mission of his church.

As alleged by the applicant, I have had time to go through the application and it is my observations that: Firstly, that, the applicant was initially charged in a Criminal Case no. 118/2021 in the Resident

Magistrate's Court of Arusha. The former charge was withdrawn but it was followed by another Criminal Charge as earlier explained. The 2nd charge was marked withdrawn when the prosecution had already commenced hearing and on the same date the applicant was arraigned before the District Court of Arusha facing the same charge as those in the two previous charges with the same the offence and same particulars of the offence.

It is perhaps apposite to have essential parts of the decision of the Apex Court of the land in the case of **Emma Bayo vs. The Minister for Labour and Youths Development and two others**, Civil Appeal No. 79 of 2012 (unreported) quoted herein under;

"The stage of leave serves several important screening purposes. It is at the stage of leave where the High Court satisfies itself that the application for leave has made out any arguable case to justify filing of the main application. at the stage of leave. The High Court is also required to consider whether the applicant is within six months' limitation period within which to seek judicial review...At the leave stage the applicant has to show that he or she has sufficient interest to be allowed to bring the main application. These are 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 grant leave to the applicant.

The same position has been discussed in the Book by D. B. Chipeta titled "**Administrative Law in Tanzania**, A Digest of Cases, 2009 Mkuki na Nyota Publishers.

In our instant application, guided by the above principles, the applicant is found to have at least demonstrated that there is arguable case. I am holding so simply because since it is not disputable that the applicant the respondent have repeatedly arrested and charged the applicant with the same offence. Hence, the need to ascertain on whether there were violations of the law or whether the acts allegedly done by the respondents were in conformity with the laws of the land. Hence, as of now it is premature for this court to ascertain whether the applicant has really been prejudiced under the pretext of section 91(1) of the CPA unless an application for judicial review is filed, heard and determined. More so, the applicant has no other effective remedy, which he can legally exercise except an application for review to the court.

Basing on the above deliberations, I find merit of this application. Accordingly, leave to apply for judicial review is granted. The applicant

has to file his application within fourteen (14) days from the date of this ruling.

Order accordingly.

DATED and **DELIVERED** at **ARUSHA** this 25th October 2023


MOHAMED. R. GWAE

JUDGE

Court. Ruling delivered this 25th day of October 2023 in the absence of the parties.




M. R. GWAE

JUDGE

25/10/2022