

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

**MISCELLANEOUS CAUSE NO. 37 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 LAW REFORM (FATAL ACCIDENTS MISCELLANEOUS  
PROVISIONS) ACT, CAP. 310 R.E. 2019**

**AND**

**IN THE MATTER OF THE PUBLIC PROCUREMENT ACT, CAP. 410 R.E.2022**

**AND IN THE MATTER OF THE PUBLIC SERVICE REGULATIONS OF 2003**

**AND**

**IN THE MATTER OF AN APPLICATION TO CHALLENGE THE DECISION OF THE  
PUBLIC PROCUREMENT APPEALS AUTHORITY**

**FOR PROCUREMENT APPEAL No. 03 of 2023/24**

**BETWEEN**

**TANZANIA BUREAU OF STANDARDS.....APPLICANT**

**AND**

**THE PUBLIC PROCUREMENT APPEALS AUTHORITY.....RESPONDENT**

**R U L I N G**

**8<sup>th</sup> & 10<sup>th</sup> Nov. 2023**

**DYANSOBERA, J.:**

This ruling is on an application for leave to apply for prerogative orders of *certiorari* and *mandamus*. The application is seeking to challenge, by way of judicial review, the decision of the respondent in Appeal Case No. 03 of 2023-24

given on 11<sup>th</sup> day of August, 2023 whereby the respondent nullified the award made to M/S SICPA SA.

The factual background pertaining to this matter can be stated briefly as follows: on 24<sup>th</sup> April, 2023, the applicant floated a tender through the Tanzania National electronic Procurement System (TANePS). On the set deadline, the applicant received three tenders from M/S Authentix Inc., M/S SICPA SA and M/S Gobal Fluids International (T) Ltd. The received tenders underwent evaluation. At the end of the day, the tender was awarded to M/S SICPA SA while that of, inter alia, M/S Authentix Inc., was disqualified. Dissatisfied, the latter unsuccessfully filed an application for administrative review to the applicant. She then, on 10<sup>th</sup> day of July, 2023, appealed to the respondent.

The respondent, after hearing the appeal, found that the award of the tender to M/S SICPA SA was not proper in law contending that the letter of award and the signed contract was a nullity. It, in consequence, nullified the award granted to M/S SICPA SA and ordered to restart the tender process in accordance with the law. The respondent's decision was handed down on 11<sup>th</sup> day of August, 2023.

The applicant thought that the decision by the respondent flew into its face, and invoking the provisions of Section 101 (1) of the Public Procurement Act [Cap. 410 R.E.2022] seeking to challenge the respondent's decision by way of prerogative orders, filed this application for the grant of leave for her to apply for judicial review. Initially, the application had been made against four respondents, namely, the present respondent as the 1<sup>st</sup> respondent, M/S Authentix Inc. as the 2<sup>nd</sup> respondent, M/S SICPA SA as the third respondent and M/S Gobal Fluids International (T) Ltd as the 4<sup>th</sup> respondent. Upon the applicant's request to amend

the application being granted by this court, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents were dropped from the current proceedings.

At the time of hearing this application for leave to apply for prerogative orders, the applicant was represented by Ms Pilly Magongo, learned Principal State Attorney. The same Counsel also held brief for Ms Vaileth Simeon, learned Senior State Attorney representing the respondent. The court was informed that the respondent was not intending to oppose the application for the grant of the leave.

The hearing of this application was canvassed by oral submission from Ms. Pilly Magongo who expounded on the contents of the supplementary supporting affidavit and the amended statement.

It is a mandatory requirement for the applicant to seek leave of the court before applying for prerogative orders. According to Rule 5 (2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, Government Notice No. 324 of 2014 published on 5<sup>th</sup> September, 2014, an application for judicial review shall not be made unless leave to file such application has been granted by the court in accordance with these Rules. This requirement was emphasized by the Court of Appeal in the case of **Emma Bayo v. the Minister for Labour and Youths Development, the Attorney General and Tanzania Posts Corporation**: Civil Appeal No. 79 of 2012 (CAT)) in the following words: -

“It is now an established part of the procedural law of Tanzania that a person applying for prerogative orders in the High Court must first apply for leave, which if granted will be followed by a subsequent main application for the prerogative orders....”

It should be recalled that the grant or refusal to grant the leave for applying for prerogative orders is in the discretion of the Court. However, it is a discretion which must be exercised reasonably, judiciously and on sound legal principles. The principles applicable in applications for leave to file prerogative orders were, as pointed out by the learned Principal State Attorney, succinctly elucidated by the Court of Appeal in **Emma Bayo** case in which it was observed that,

“..... the stage of leave serves several important screening purposes: It is at the stage 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 the tribunal subordinate to the High Court. At the leave stage is where the applicant shows that he has sufficient interest to be allowed to bring the main application”

These, according to the Court, are preliminary matters which the High Court should consider when exercising its discretion to grant or to refuse to grant leave.

As rightly submitted by the learned Principal State Attorney, in an application for leave, all that the court looks for is whether the Applicant has sufficient interest or *locus standi*, whether he has an arguable case and whether he has timeously filed his action. The issue calling for determination, therefore, is whether the applicant has met these thresholds.

As regards time, Ms Pilly Magongo contended that under section 19(3) of the Law Reform (Fatal Accidents Miscellaneous Provisions) Act [Cap 310 R.E. 2019], the law has provided a period of six months. Further that the shorter period

of 14 days has been provided in section 101(1) of the Public Procurement Act [cap 410 R.E 2022] which states that an aggrieved party has to file judicial review to the High Court within fourteen days of the date of delivery of such decision. The learned Principal State Attorney was of the view that the time factor parameter has been satisfied. She pointed out that the respondent's decision was delivered on 11<sup>th</sup> day of August, 2023 and the applicant filed this application on the 24<sup>th</sup> August, 2023 and made reference to paragraph 20 of the supplementary affidavit verifying the facts relied on in the amended statement in respect to the time this application was filed and its subsequent amendment.

With respect to the second principle, this court was referred to paragraphs 17,18 and 19 of the amended verifying affidavits on the applicant's grievances with respect to the respondent's decision. According to the learned Principal State Attorney, the applicant has established an arguable case as she was aggrieved by the respondent's decision made on 11.8.2023 which did not take into account the proper computation of time to file complaints by Authentic Inc. and wrongly established the date of filing the complaint to the applicant being, 9<sup>th</sup> June 2023 instead of 7<sup>th</sup> June 2023. The respondent determined the issue of litigation history which was not disclosed during the tendering process which was clarified by the applicant as an investigation and not litigation as determined by the respondent in its decision.

Respecting the issue of cool off period, the applicant seeks to impugn the respondent's decision on account that that issue was raised *suo motu* without affording parties the right to be heard. This court was referred to p. 48 of the respondent's decision which is attached as TBS "G". it is thus argued that the

applicant has established an arguable case to be allowed to file application for prerogative orders.

On sufficiency of interest, it is averred under paragraph 1 of the applicant's supplementary affidavit that the applicant is a Parastatal Organization established by the Act of the Parliament whereby, under Section 4(9) of the Standard Act [Cap. 130 of R.E. 2019], the applicant is mandated to act as the custodian and an overseer of observance of the standards in Tanzania. According to Section 4 (1) of the Act, subject to any direction of a general nature which the Minister may give under section 31, the functions of the Bureau shall include to undertake measures for quality control of commodities, services and environment of all descriptions and to promote standardization in industry and trade. Learned Principal State Attorney pointed out that pursuant to that power, the applicant issued a general procurement notice for supply of Fuel Marker (under Framework Agreement), Plastic Cylinders, Metal Jerricans, Fuel Dosing System and Fuel Detection System for the TBS. in that respect, Ms Pilly Magongo argues that consequent to the errors committed by the respondent, the effects listed under sub-paragraphs i, ii, iii and iv of paragraph 23 to the applicant's amended statement will ensue to the government.

In conclusion, the learned Principal State Attorney reiterated that since the issue of leave is a judicial discretion to either grant or not, based on the three established parameters, the applicant urges this Court find the application for leave merited on the strength of facts as stated in the supporting affidavit, the statement and the cited authorities.

As the record clearly depicts, this application has been taken out under section 101 of the Public Procurement Act [Cap 410 R.E 2022], Section 17(1)(2)(3)(4) and Section 19 (3) of the Law Reform (Fatal Accidents Miscellaneous Provisions) Act [Cap 310 R.E 2019] and Rule 5(1) and 2(a) (b) (c) (d) and 5(3) and 7(1) (2) (3)(4) and (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN No. 324 of 2014.

Having considered the law under which this application has been brought, the submission of the learned Principal State Attorney for the applicant and the cited authorities, there is no dispute that for the court to invoke its discretionary powers of granting leave to the applicant to apply for prerogative orders of certiorari and mandamus, the parameters set out in **Emma Bayo case** and expounded by the learned Principal State Attorney must be established.

In the application in question, I am satisfied that the application for leave has been made timeously, that is within six months after the date of decision to which the application for leave relates as required under rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN No. 324 of 2014. Furthermore, the applicant has met the requirement under section 101 (1) of the Public Procurement Act [Cap 410 R.E 2022] of 14 days period which requires an aggrieved party to file judicial review to the High Court within fourteen days of the date of delivery of such decision. On this aspect, paragraph 20 of the supplementary affidavit verifying the facts relied on in the amended statement clearly states that *the applicant being dissatisfied with the decision of the respondent, filed an application for leave on 24<sup>th</sup> August, 2023 and on 2<sup>nd</sup> November, 2023 the court granted leave to amend*

*the application for leave hence this application to challenge the decision of the respondent.*

As far as the second principle is concerned, the applicant's grievances against the respondent's decision are set out under paragraphs 17, 18 and 19 of the statement which accompanies the affidavit that supports the application and verified under paragraphs 16, 17 and 18 of the supplementary (amended) affidavit as follows: -.

17. That the respondent computed reckoning of time to file complaint to the applicant to be 9<sup>th</sup> June, 2023. It is further stated that on the 7<sup>th</sup> June, 2023 is when the applicant uploaded the intention of award to the TANEPS-the Auditing report TBS H.

18. That the respondent held that M/S SICPA SA had litigation history which he did not disclose during tendering process. It is further stated that M/S SICPA SA was only under investigation.

19. That the respondent, *suo motu* raised and determined the issue of cool off period. It is further stated that the applicant was not heard on the cool off period before the respondent.

With these facts, I am satisfied that the applicant has established that it has an arguable case worthy of further consideration.

Respecting the third principle, it is averred under paragraph 23 of the amended statement which accompanies the affidavit that supports the application that consequent to the errors committed by the respondent, the country will face the following effects in the event the respondent's decision is implemented, that is the nullification of the award and the signed contract, namely,

- i. Illuminating Kerosene (IK), Automatic Gas Oil (AGO) and Motor Spirit Premium (MSP) to be distributed in the

domestic market will not be marked the effect of which tax will not be realised hence occasioning loss of the Government Revenues due to tax evasion.

- ii. The Government will fail to control adulteration and dumping into the local (domestic) market of the tax exempted, smuggled and transit petroleum products;
- iii. The general public at large (consumers) will not get value of their money when purchasing petroleum products, as they will not be assured of the quality since fuel marking program is expected to bring efficiency in monitoring and testing the quality of petroleum products from entry points down to the retail stations; and,
- iv. The Government will not achieve its goal of implementing a comprehensive, clear and workable regulatory framework for the development of the country's mid and downstream petroleum sub-sector.

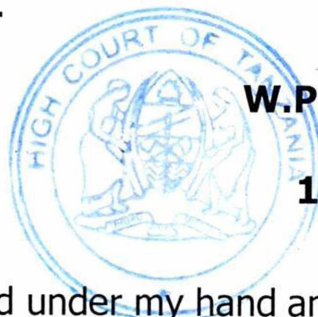
To me, these facts show that the applicant has sufficient interest or locus standi taking into account that under the law, the applicant is enjoined not only to undertake measures for quality control of commodities, services and environment of all descriptions and to promote standardization in industry and trade but also is mandated to act as the custodian and an overseer of observance of the standards in Tanzania.

It should be observed that at the leave stage without the need to go into depth of the abundance of authorities, it is sufficient for me to state that the threshold of the granting of such leave is very low. Leave is normally granted if the application is neither frivolous nor vexatious and it justifies further argument on a substantive application for prerogative orders. I am fortified in this by what the Court of Appeal in **Emma Bayo case** observed. Speaking through his

Lordship Juma, J.A. (as he then was), the Court was, at p. 9 of the judgment, emphatic that the High Court exercising judicial discretion in determining issue of leave, should not indulge itself in considering the main application as in doing so is to go "beyond what was expected of the trial court at the stage/step of application for leave". The Court described such conduct as "overstepping" on the main application.

Consequently, and for the reasons I have indicated and taking into account that this application for leave stands unopposed by the respondent, I find the application for leave is deserving of being granted and it is accordingly granted with no order as to costs. The parties are enjoined to act in accordance with the law, in particular, paragraph (b) of sub-section (2) of Section 101 of the Public Procurement Act.

It is so ordered.



  
**W.P. Dyansobera**  
**JUDGE**  
**10.11.2023**

This ruling is delivered under my hand and the seal of this Court on this 10<sup>th</sup> day of November, 2023 in the presence of Ms Pilly Magongo Principal State Attorney for the applicant and also holding brief for Ms Vaileth Simeon, learned Senior State Attorney for the respondent.



  
**W.P. Dyansobera**  
**JUDGE**