

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA SUB – REGISTRY**

**AT MBEYA**

**MISC. CIVIL APPLICATION NO. 000026555 OF 2023**

**IN THE MATTER OF AN APPLICATION TO APPLY FOR ORDERS OF  
CERTIORARI MANDAMUS AND PROHIBITION BY GEORGE NICHOLAUS  
LUTERA**

**AND**

**IN THE MATTER OF LAW REFORM (FATAL ACCIDENT AND MISCELLENIOUS  
PROVISION) ACT CAP 310 R.E 2002**

**AND**

**IN THE MATTER OF LAW REFORM (FATAL ACCIDENT AND MISCELLENIOUS  
PROVISION) (JUDICIAL REVIEW PROCEDURE AND FEES) RULES, 2014 (GN  
NO. 324)**

**AND**

**IN THE MATTER OF GEORGE NICHOLAUS LUTERA WHO IS APPLYING FOR  
JUDICIAL REVIEW AGAINST THE DECISION OF THE 1<sup>ST</sup>, 2<sup>ND</sup>, AND 3<sup>RD</sup>  
RESPONDENTS TO TERMINATE THE APPLICANT FROM EMPLOYMENT  
WITHOUT FOLLOWING LEGAL, FAIR REASON AND FAIR PROCEDURE OF LAW**

**BETWEEN**

**GEORGE NICHOLAUS LUTERA..... APPLICANT**

**VERSUS**

**THE DIRECTOR OF TANZANIA LIVESTOCK**

**RESEARCH INSTITUTE (TALIRI).....1<sup>ST</sup> RESPONDENT**

**THE PERMANENT SECRETARY FOR THE MINISTRY OF**

**LIVESTOCK AND FISHERIES.....2<sup>ND</sup> RESPONDENT**

**THE PUBLIC SERVICE COMMISSION.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

## **RULING**

*Date: 27 March 2024 & 09 April 2024*

### **SINDA, J.:**

The Application is for leave to apply for judicial review made under Rule 5 (1), (2) (a), (b), (c) (d) and 3 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedures and Fees) Rules 2014 (GN No. 324) (the **Rules**).

The application is by way of chamber summons supported by the applicant's statement of facts and the affidavit sworn by the applicant. The Respondents opposed the application through their joint reply to the applicants' statement and counter affidavit sworn by Edwin Peter Chang'a.

Briefly, on 12 August 2020, the applicant was terminated from his employment as an Accountant Officer Level I at the Tanzania Livestock Research Institute (**TALIRI**). On 2 September 2020, the applicant appealed to the Public Service Commission (**PSC**). The PSC upheld TALIRI's decision. Again, dissatisfied with the PSC's decision, the applicant appealed to the President of the United Republic of Tanzania. The President dismissed the applicant's appeal.

At the hearing of the application, the applicant was represented by Mr. Loth Joseph Mwampagama, Learned Counsel. The respondents were jointly represented by Mr. Allan Shija and Epafras Njau, Learned State Attorneys.

Mr. Mwampagama prayed for this Honourable Court to grant leave to file an application for judicial review against the decision of the first, second and third respondents, who are the employers of the applicant. He stated that he was terminated from his employment unfairly, and his appeals on the said termination were unsuccessful.

Mr. Mwampagama submitted that the application was filed in court within time. He further argued that the applicant's employment was terminated unlawfully, and for the interest of justice, the court should grant him leave to file judicial review.

In reply, Mr. Shija submitted that the criteria for granting leave for judicial review are provided in the case of ***Cheavo Juma Mshana vs Board of Trustees of Tanzania National Parks & 2 others***, Miscellaneous Civil Cause No. 7 of 2020 as cited in the case of ***R versus I.R.C Exp National Federation of Self Employed and Small Business Ltd*** (1982) A.C. 617, to wit:

1. The applicant must demonstrate there is an arguable case, thus a ground for seeking judicial review exists;
2. The applicant has to show sufficient interest in the matter to which the application relates;
3. The applicant has acted promptly; and
4. The applicant has to show that there is no alternative remedy available.

Mr. Shija stated that the first criteria require the applicant to demonstrate that there is an arguable case. Unfortunately, the chamber summons and affidavit by the applicant do not demonstrate the same. Mr. Shija contended that the applicant failed to explain the procedural irregularity surrounding the termination of his employment. Thus, failing to establish a prima facie case against the respondents.

On the second criterion, Mr. Shija argued that the applicant has to show sufficient interest in the matter to which the application relates. He referred to the case of explained in the case of ***Emma Bayo versus The Minister for Labour & Two Others***, Civil Appeal No. 79 of 2012 (Court of Appeal of Tanzania (**CAT**) at Arusha) to support his argument.

On the third criterion, Mr. Shija agrees with the applicant's counsel that the application is filed within time. On the fourth criterion, Mr. Shija contended that the applicant's counsel did not meet the criteria that no alternative remedy was available.

In rejoinder, Mr. Mwampagama argued that the applicant met the first criteria as the affidavit made clear he was unfairly terminated. He insisted that this is an indication for an arguable case, contending that the rest of the criteria were adhered to as well.

After reviewing the court records and submissions by the parties, the main question is whether the application has met all the requisite conditions for granting leave to file an application for judicial review.

In the case of ***R versus I.R.C Exp National Federation of Self Employed and Small Business Ltd*** (supra), the court laid down the criteria for granting leave for judicial review.

In the applicant's affidavit and statement in support of this application, the applicant managed to demonstrate the existence of an arguable case. In his affidavit supporting this application, the applicant noted that in the

termination of his employment, the procedures for termination were not adhered to.

Mr. Shija's argument that the applicant did not explain how the proper procedures were not followed cannot be entertained at this stage, or else this court will be dealing with issues to be deliberated with in the application for the judicial review.

On the second criteria there is no dispute that this application has been filed within the time limit of six months prescribed by the law.

I am also satisfied that the applicant has shown that he has sufficient interest to be granted leave to file an application for judicial review since he was personally affected by the termination of his employment and has exhausted all available remedies, thus he has no alternative remedy apart from an application for judicial review.

In conclusion, it is the finding of this court that this application has merit. The prayer for leave to file the application for judicial review is hereby granted. Each part will bear his own costs.

It is so ordered.

DATED at **MBEYA** this 9 day of April **2024**.



A. Zin

**A.A. SINDA  
JUDGE**

The Ruling is delivered on this 9 day of April 2024 in the presence of the applicant who appeared in person and Mr. Shija, Mr. Njau and Ms. Mwamlima, counsels for the Respondents.



A. Zin

**A.A. SINDA  
JUDGE**