

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(ARUSHA SUB-REGISTRY)**

**AT ARUSHA**

**MISCELLANEOUS CIVIL CAUSE NO.20 OF 2023**

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

**AND**

**IN THE MATTER OF CLAIM FOR STATUTORY COMPENSATION FOR  
DEATH OF JACKSON ALOYCE KAGARUKI**

**ALOYCE M. KAGARUKI (Administrator of the Estate of the late  
JACKSON ALOYCE KAGARUKI.....APPLICANT**

**VERSUS**

**ARUSHA DISTRICT COUNCIL.....1<sup>ST</sup> RESPONDENT**

**CHIEF SECRETARY.....2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

**12/03/2024 & 16/04/2024**

**KIWONDE, J.:**

The applicant, one Aloyce M. Kagaruki (Administrator of the estates of the late Jackson Aloyce Kagaruki), filed this application by way of



chamber summons supported by his affidavit praying for the following court orders: -

- a) That, this court be pleased to grant leave to file judicial review for the orders of *certiorari* against the decision of the Chief Secretary for refusal to pay compensation for the death of the late Jackson Aloyce Kagaruki through a letter with Reference No. CAD.124/541/01/44 dated 20<sup>th</sup> March 2023 and the order of *mandamus* for payment of statutory compensation due to death of the deceased who died in the motor vehicle accident while in the course of his employment with Arusha District Council.
- b) Cost of this application be provided for to the applicant
- c) Any other relief (s) this court may deem fit and just to grant.

The respondents filed a counter affidavit and joint statement in reply, but they refuted the facts deponed by the applicant in the affidavit supporting this application.

On 13<sup>th</sup> December 2023, it was agreed by the parties and ordered by the court that the application be disposed of by way of filing written submissions and both sides filed them.

In his submissions in-chief, the applicant argued that the late Jackson Aloyce Kagaruki was an employee of the first respondent for six (6) years



from the year 1998 to his death on 30<sup>th</sup> September 2004 due to motor vehicle accident while in the course of his employment. The applicant said the deceased was a public servant who drove the motor vehicle with registration Number STK 964 Mitsubishi Pick-up owned by the first respondent. But the first respondent did not pay statutory compensation to the beneficiaries.

Besides that, the applicant said on 5<sup>th</sup> February 2023, he received a letter from the first respondent dated 22<sup>nd</sup> November 2022 with Ref. No.MM/AR/S20/23/108 on the decision on the matter, but the decision was made by the 2<sup>nd</sup> respondent via a letter dated 20<sup>th</sup> March 2023 with Ref. No. CAD.124/541/01/44.

According to the applicant, among the reasons for this application is that he was denied of his right to be heard because he was not called to the Committee which made decision and refused compensation and he was not even given the copy of the proceedings of the said committee's decision, thus, he was not informed of the reasons or grounds for reaching to the decision. He referred to the case of **Naiman Abel Mchovu Versus Tanzania Atomic Energy Commission**, Miscellaneous Cause No. 15 of 2022, High Court of Tanzania (unreported).



Also, the applicant submitted that the 2<sup>nd</sup> respondent did not consider the findings of the District Court of Arusha in Inquest Case No.1 of 2008 and that the late Jackson Aloyce Kagaruki was a junior employee who could not deviate from the instruction of his superior officer of the first respondent. The applicant asked this court to grant the application.

In reply, the respondents resisted the application on reason that the applicant has failed to demonstrate *prima facie case* to justify grant of the application. According to the respondent, leave to file application for judicial review can be granted if there is an arguable case, the applicant must show sufficient interests and the application must be filed within six (6) months from the date of the alleged decision. The respondent cited **Emma Bayo Versus Minister for Labour and Youth Developments and 2 others**, Civil Appeal No.79 of 2012, Court of Appeal of Tanzania at Arusha (unreported).

Apart from that, the respondent submitted that the letter of the Chief Secretary indicated the reasons for refusal to pay compensation and the investigation committee ruled that the deceased was not eligible to be paid compensation for he was not a public servant, did not overwork and or involved in an accident in the course of his employment.



Concerning the copy of the committee's report, the respondent said the applicant never requested for it. The respondent asked the application be dismissed with cost.

There were no rejoinder submissions.

From the pleadings and written submissions, the major issue for determination is whether the application finds merits.

It is rightly argued by the respondent that for the application for leave to file application for judicial review to be granted, the applicant has to meet the legal requirements such as, establishing that the application has been filed within six (6) months from the date of the decision sought to be impugned. This is provided for under rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014.

In the present application, the alleged decision of the 2<sup>nd</sup> respondent was made on 20<sup>th</sup> March 2023 where the applicant became aware of the decision sought to be impugned on 31<sup>st</sup> March 2023 when he was given a letter to that effect; and this application was filed on 21<sup>st</sup> September 2023. The respondent did not argue this fact. Thus, the first condition for the applicant to succeed in the application for leave to file review has been met.

Besides that, the applicant must demonstrate that he has sufficient interest (s) and that there is an arguable case. In the application at hand, the applicant is an administrator of the estates of the late Jackson Aloyce Kagaruki, and he seeks to be paid statutory compensation for the death of the said employee. Therefore, the applicant has sufficient interest in the matter and hence, he has *locus standi* to do so.

As to the existence of the *prima facie* case, the applicant raised concerns that he was deprived of the right to be heard since the 2<sup>nd</sup> respondent formed a committee which made investigation, furnished him with the report and then a letter of the decision refusing statutory compensation for the death of Jackson Aloyce Kagaruki was given to the applicant without affording him an opportunity to be heard. This fact was not disputed by the respondent. The issue as to whether the deceased was an employee was to be determined after hearing the applicant. Failure to hear him is against the principle of natural justice, that is, right to be heard.

Leave that alone, the applicant said the said letter did not indicate the reasons for decision and he was not supplied with what he called copy of the proceedings. Thus, it is apparent that there is an arguable case.



To that end, I find and hold that the application is meritorious and it is hereby granted. Leave to file application for judicial review is granted. The applicant is availed with fourteen (14) days from the date of this ruling to file application for judicial review.

Since there are further legal proceedings, each party shall bear own cost.

  
**F. H. Kiwonde**

**Judge**

**16/04/2024.**

**Court:** Ruling is delivered in chamber in the presence of the applicant in person, Ms. Christabella Madembwe, State Attorney and Maryciana Mgas (RMA) this 16<sup>th</sup> April 2024 and the right of appeal is explained.

  
**F.H. Kiwonde**

**Judge**

**16/04/2024.**

