IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM MAIN REGISTRY

AT DAR ES SALAAM

MISCELLANEOUS CAUSE N0. 24 of 2023

IN THE MATTER OF AN APPLICATION FOR PREROGATIVE ORDERS OF CERTIORARI AND MANDAMUS

AND

IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENT MISCELLANEOUS PROVISIONS) ACT, CAP 310 (R: E 2019)

AND

IN THE MATTER OF THE PUBLIC SERVICE ACT, CAP 298(R: E 2019)

AND

IN THE MATTER OF THE PUBLIC SERVICE REGULATIONS OF 2003

AND

IN THE MATTER OF AN APPLICATION TO CHALLENGE THE DECISION OF THE PRESIDENT OF UNITED REPUBLIC OF TANZANIA TO UNPROCEDURALLY MAKE/FORCE THE APPLICANT RETIRE FROM PUBLIC SERVICE, DATED 15TH AUGUST 2022

BETWEEN

KOMANYA ERIC KITWALA…… APPLICANT

AND

PERMANENT SECRETARY, PUBLIC SERVICE

MANAGEMENT & GOOD GOVERNANCE …….1ST RESPONDENT

THE ATTRONEY GENERAL……2ND RESPONDENT

RULING

MKWIZU, J:

The applicant is a former employee to the public service pensions fund (PSPF) as a legal officer the position that he held from 30th July 2010 to 30th July 2018 when he was appointed to a District Commissioner, Tabora District. He, according to the affidavit, served as a District Commissioner in Tabora District until 18th November 2021 when his appointment was revoked by the President of the United Republic of Tanzania. He, from there wrote a letter to the Public Service Management and Good Governance requesting to be reinstated to his former position at PSSSF, in response thereof, he was on 15th August 2022 served with a letter from Public Service Management and Good Governance informing him that he has been retired from Public Service in public interest by the President of the United Republic of Tanzania.

Applicant is aggrieved by the manner on which he was retired hence this application for prerogative orders /Judicial review (Certiorari and Mandamus) filed on 6th June under section 17(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap 310 R: E 2002) and Rule 8 (1) (a) (b) (2) of the Law Reform (Fatal Accident and Miscellaneous Provisions Judicial Review Procedure and fees) Rules,2014 seeking for an order of certiorari to call for, quash, and set aside the decisions by the President of the United Republic of Tanzania for being made ultra vires against the rules of natural justice and for being embarrassing to the applicant. He also prayed for an order of mandamus compelling the 1st respondent to reinstate him into his employment before he was appointed to the post of a District Commissioner, paid all his salary arrears and other

endowments from 28th June 2021 to the date of his reinstatement.. The prayers in the chamber's summons are crafted thus:

a) *That, this honorable court be pleased to issue an order certiorari to call for quash and set aside the decision by the president of the United Republic of Tanzania, for being made ultra vires, against the rules of natural justice and embarrassing to the Applicant.*
b) *That, this honorable court be pleased to issue an order of mandamus to compel the 1st Respondent to reinstate the Applicant into his employment before he was appointed to the position of District Commissioner, and that he be paid all his salary arrears other emoluments from 28th June 2021 to the date of his reinstatement.*
c) *Costs be borne by the Respondent.*
d) *Any other Order or Orders that this honorable court may deem just and equitable to grant.*

When the application was called for hearing, Mr. Jeremia Mutobesya the learned advocate was in court for the applicant, while the Respondents namely, Permanent Secretary Public Service Management and Good Governance and the Attorney General were represented by Mr. Edwin Joshua Webilo assisted by Evelyn Ilahuko, all learned State Attorneys.

Mr. Mutobesya opened his address by adopting the affidavit and statement of Komanya Erick Kitwala to be part of his submissions and went ahead to argue the grounds of the applications listed in paragraph 5 of the statement in seriatim. He in ground one faulted the President of the United Republic of Tanzania decision for failure to give reasons for the

decision. His arguments were grounded in principle obliging whoever gives a decision affecting one's right to give reasons for such a decision. He contended that, contrary to the above principle, the applicant's termination letter was issued without details of the public interest obliged his removal from the office. He cited to the court the case of **James F. Gwagilo V the Attorney General** (1994) TLR 73.

Submitting on the second ground, Mr. Mtobesya said the decision was vague and irrational as it did not give reasons as to what public interest was there to be served and therefore against the rules of natural justice. He was emphatic that the phrase ***public interest*** needs to be explained in each circumstance to remove the possibility of arbitrariness. He also cited **Said Juma Muslimu Shekimweri V The Attorney General**, (1997) TLR, 3 and **Gwagilo's case (supra)** to bolster his position.

On denial of the right to be heard, the attention of the court was drawn to the provisions of the law cited in the retirement letter (annexure to paragraph 10 of the affidavit) namely; Articles 36 (1) and (2) of the Constitution; Section 5(1) of the Public Service Act and Section 24 (1) of the Public Service Act, Rule 29(1) of the Public Service Rules 2003 with a strong submissions that Article 36 (1) and (2) of the Constitution do not cater for removal of a public servant from his posts. While Article 36 article (1) talks about constituting and abolishing any office in the service, sub-article (2) provides for appointments to fill the posts, Article 36 (3) is for appointments and termination and section 5(1) of the Public Service Act deals with the powers of the President to appoint and therefore were cited out of context.

While conceding that section 24 (1) of the Public Service Act, Rule 29(1) of the Public Service Rules 2003 and paragraph F40 of the Standing Orders were appropriately cited for they deal with the removal of a public servant from office, Mr. Mtobesya was quick to add that the applicant grievance is basically on his denial of his constitutional right to be heard a right that is to be strictly observed in whatever stage where one's right is discussed. Making reference to the famous decisions of **Rev Christopher Mtikila V Attorney General**, (1995) TLR 31 (Holding No 17) and **Judge Incharge High Court At Arusha and the Attorney General v N.N Munuo Ng'uni**(2004) TLR, 44 , Mr. Mtobesya said, when interpreting section 22 (2) (b) of the Advocate's Ordinance which did not provide for room for a right to be heard vis a viz, the Constitutional right to be heard, the Court insisted that the right to be heard is paramount before a decision is made against a person or a property and in the absence of any set or fixed procedure, the relevant authority must create and carry out the necessary procedures and where procedures are not comprehensive, the authority must supplement them to ensure compliance with constitutional justice. He was enthusiastic that since the termination letter and the proceedings subject to the decision under scrutiny had no prescribed procedures, the authority would have created the procedures to accord the applicant a right to be heard. He urged the court to quash and set aside the decision for non-compliance with the rules of natural justice.

In his fourth ground, the applicant's counsel was of the view that, the President had acted ultra vires because the provisions of the law cited in its decision provide for the removal of one from public service and not retirement. The President's power to remove a public servant from his

posts is provided for under rule 29(1) (2) and (3) of the Public Service Regulations of 2003 / 2022 while the retirement procedure is stipulated under regulations 30, 31, and 32 of the same Regulations. And further that, under Rules 30 and 31 the power to retire a public servant from public service is vested to the appointing authority and not the President and in Rule 32 it is upon attainment of age of compulsory or voluntary retirement.

He, in his last ground censured the decision for being embarrassing to the applicant. On this, he said, the wrong citation of the applicable law in the President's decision caused the applicant's considerable embarrassment. Reliance was made on the case of **Said Juma Muslim Shekimweri** (Supra).

Mr. Webiro, the learned State Attorney on behalf of the respondents started by impeaching the tenability of the second prayer in the chamber summons by arguing that, in judicial review case the High Court is exercising the supervisory powers of the administrative bodies, investigating on the legality of the decisions and not to attempt itself execute the tasks entrusted to that authority by the law by substituting its decision with the opinion of the administrative board as prayed for in prayer b in the chamber summons. He in elaboration said, this court has no power to issue an order of mandamus compelling the respondent to reinstate the applicant to his former position. The court's concern in this application, is to see if the procedure used in removing the applicant from his public service was followed and make appropriate orders to rectify the errors if any. In a bid to bolster his point, the learned state attorney referred the court to J**ohn Mwombeki Byombariwa V Reginal Commisoner Kagera And Others** (1987) TLR 1; **The Chief Constable**

of the North Wales Police and Evans, WLR 1982-page 1155, 1160 (G) and A book by **MP Jain and N S Jain, on Principles of Administrative Law**, 8th Edition, Justice D.M Dharmadhikari, V. 2-page 2024 emphasizing that the court cannot substitute its opinion with that of the administrative board. He urged the court to decline the invitation by the applicant in prayer b.

Responding to ground three, the learned State Attorney said, the applicant's argument that articles 36 (1) and (2) of the constitution are out of context is a bit misconceived because to him, articles 36(1) and (2) are the relevant provisions that give the President powers to remove a public servant from public service in the public interest. He invited the court to disregard the applicant's submissions on this aspect.

He went further to submit that, the applicant was removed from public service by the President under Article 36(1) of the Constitution, section 24 (1) of the Public Service Act, and R. 29(1) of the Rules and Order F 40 of the standing order in which the President is not required to formally charge the public servant and accord him a right to be heard. Citing the case of **Cleaophas M. Motiba And Others V The Principal Secretary of the Ministry of Finance and Others,** Civil Appeal No. 27 of 2010(Unreported) he said, the applicant's contention that he was not afforded the right to be heard is misplaced.

While acknowledging the decision in **Mtikilas Case** cited by the Applicant's counsel, Mr. Webiro was of the view that, the said decision is distinguishable from the facts of the case at hand because, one, in that case the Court was not dealing with the powers of the President to remove a public servant from public service for public interest and secondly, the

case was purely constitutional matter discussing the fundamental rights of the citizen not related to removal of a public servant from public service. **In Munuos case, (Supra)** he said, the Court was dealing with the suspension of an advocate without according him a right to be heard and a right to defend and not removal of a public servant from public service in the public interest. He urged the court to find the third ground unmerited.

Regarding the fourth ground, the learned State Attorney submitted that the words removal and retirement are used interchangeably and have the same meaning. An employee removed from public service in public interest by the President is considered to have been retired from service which is why he is paid retirement benefits under section 26 of the Public Service Retirement Benefits Act, Cap 371 RE 2002. He on this banked-on **AG V Said Juma Shekimweri,** (2002) EALR, 16 stating that the decision relied upon by the applicant was revised by the Court of Appeal. He also referred the court another case of **Permanent Secretary (Establishment) And the Attorney General V Hilal Hamed Rashid and 4 Others**, (2005) TLR 123, insisting that the terms removal from office in the public interest and to retire from office in the public interest means the same thing. He for the same reason argued that since the two terms are synonymous, used interchangeably, then no embarrassment was occasioned to the applicant as asserted in paragraph (e) of the applicant's grounds.

Contesting the 1st ground by the applicant, the learned State Attorney said, when the President is removing a public servant from public office in the public interest is not bound by normal procedures on disciplinary actions by assigning reasons for the decision. Reliance was made on

Cleaophacy Musiba(supra) where the Court of Appeal held that the President is not bound by the disciplinary procedures.

Seemingly in the alternative, the learned State Attorney said, should the court find the President in error for not assigning reasons, it should also see to it that the right to know the reasons for the decision is not absolute, it is coupled with many exceptions including; in situation of emergencies, where disclosure would be prejudicial to the public interest; where prompt action is needed; where it is impracticable to hold a hearing or appeal; where no right of a person is infringed; where there is an express provision that excludes compliance and where procedural defect would have no difference to the outcome. He was of the view that since the removal of the applicant came immediately after he was removed from his position as a District commissioner, a chairman of the District Security committee, the reasons leading to his removal fall squarely within the ambit of the National Security Council Act and the National Security Act which criminalizes disclosure of all the information relating to security issues. He cited the decision of the Supreme Court of India in **Charan Lal Sahu Etc V Union of India and Others**, AIR, 1990, 1480 page 76 to bolster his argument stressing that should the court find that it was incumbent upon the President to assign reasons, then it should pronounce that there is an exception to the requirement by looking at the position held by the applicant immediately before his retirement and the limitation set by National Security Council Act and declare the removal lawful. He finally prayed for the dismissal of the application with costs.

Rejoining Mr. Mtobesya accepted the legal framework explained by the learned State Attorney in relation to ground b but went further to contest the learned State Attorney's prayer to have the prayer in that ground declined contending that applicant has managed through paragraphs 8 and 9 of the affidavits to establish paramount fact to be proved before a mandamus prayer is granted. He said, there was a formal request by the applicant to be reinstated into his former position at the Public Service Pension Fund to the public board and the public board did not act. So, the court has the material facts to work on, on that prayer. He maintained that the submissions by the State Attorney were made in ignorance of the facts contained in paragraphs 8 and 9 of the supporting affidavits.

While restating his earlier submissions in support of ground c, he said, the **Cleophas Case** decision did not refer to its previous decisions. Had the Court of Appeal been made aware of the decision of **The Judge in charge V Munuo**, on the right to be heard, it would not have arrived at this decision. He believes that **Munuo's case** is still a good law when it comes to the administrative body's right to make decisions over one's rights.

It was Mr. Mtobesya's position that the removal of a person from employment and retirement have two different and distinct procedures. Removal is done by the President and the retirement is done by the appointing authority stating that the case of **The Permanent Secretary (establishment)** was interpreting articles 36(2) of the constitution as it was in 1995 which is now sub-article 36(3) of the 2000 Constitution version. He invited the court to see the distinction of the interpretation.

He restated his submissions in chief in relation to ground (e)and (a) with an additional explanation that the President was duty-bound to give reasons, and the exception brought by the National Security Act cited by the learned State Attorney are not applicable because the applicant was retired as a public servant and therefore not subject to the National Security Act. He prayed for the reliefs sought in the application.

I have curiously considered the submissions, the provisions of law and the authorities referred to by the parties. The main issue for determination is whether the applicant has made out a case for an order of certiorari and mandamus.

On numerous occasions, the Court has set out condition precedent for grating an order of certiorari including **Sanai Murumbe &Another Vs Muhere Chacha** (1990) TLR 54 where six conditions were listed as follows:

> *"…. **One** that the subordinate court or tribunal or public authority has taken into account matters which it ought not to have taken into account, **two** that the court or tribunal or public authority has not taken into account matters which it ought to have taken into account, **three** lack or excess of jurisdiction by the lower court, **four** that the conclusion arrived at is so unreasonable that no reasonable authority could ever come to it, **five** rules of natural justice have been violated and **Six** illegality of procedure or decision".*

And in **M/S Olam (T) Limited Vs Leonard Magesa & 2 Others**, Misc Civil Cause No. 6 of 2019(HC at Mwanza) where it was held:

> *"…. For this court to exercise its power to issue an order for certiorari against the decision of the 2nd respondent, it must be established*

that the decision was arbitrary and contrary to the rules of natural justice. It must also be proved that decision was irrational …i.e., unreasonable and unfair or that it was tainted with procedure impropriety and or it violated the provisions of Art 13 (6) (a) of the Constitution of the United Republic of Tanzania 1977 as amended".

In this matter, the applicant's statement of application contains a list of five grounds namely: -

a. *The President of the United Republic of Tanzania did not give reasons for her decision.*
b. *The President of the United Republic of Tanzania's decision is vague and irrational.*
c. *The President of the United Republic of Tanzania condemned the Applicant without a hearing.*
d. *The President of the United Republic of Tanzania acted ultra vires.*
e. *The President's decision is embarrassing the Applicant.*

It is not in dispute that the applicant was retired in the public interest on 15/8/2022 by the President. This is evidenced by the letter attached to the 10th paragraph of the supporting affidavit that is couched thus:

"JAMHURI YA MUUNGANO WA TANZANIA

OFISI YA RAIS NA UTAWALA BORA

MENEJIMENTI YA UTUMISHI WA UMMA NA UTAWALA BORA

Bw. Komanya Eric Kitwala

EX- Mkuu wa Wilaya.

"Kuh: KUSTAAFISHWA KAZI KWA MANUFAA YA UMMA

Tafadhali rejea kichwa cha habari kuhusu somo tajwa hapo juu,

2.Ninapenda kukuarifu kuwa, Rais wa Jamuhuri ya Muungano wa Tanzania kwa mamlaka aliyonayo chini ya ibara ya 36(1) na (2) ya Katiba ya Jamuhuri wa Tanzania ya Mwaka 1977 ikisomwa na vifungu vya 5(1) na 24(1) vya sheria ya utumishi wa umma ,sura ya 298,Kanuni ya 29(1) ya kanuni za utumishi wa umma za mwaka 2003 na kanuni F.40 ya kanuni za kudumu za umma toleo la mwaka 2009 ,amekustaafisha kazi kwa manufaa ya Umma kuanzia tarehe 09,Agost,2022.

3.Kwa kuwa mafao ya kiinua mgongo katika utumishi wa kisiasa katika nafasi ya ukuu ya Mkuu wa Wilaya Pamoja na gharama za kurudishwa kwenye makazi yako ya kudumu (place of Domicile)yameshalipwa kupitia ofisi ya Rais,Tawala za Mikoa na Serikali za mtaa,utalipwa mafao katika utumishi wa umma kwa mujibu kifungu cha 26(1)(e) cha sheria ya mfuko wa Hifadhi ya Jamii kwa watumishi wa umma sura ya 371 .Aidha kipindi cha kuanzia tarehe 28 Julai 2018 hadi tarehe ya kustaafu kwako litahesabika kuwa cha likizo bila malipo".

4. Mwisho,kwa niaba ya serikali ninachukua nafasi hii kukushukuru kwa mchango wako katika Utumishi wa Ummakwa kipindi chote ulichofanya kazi na ninakutakia kila la kheri katika Maisha yako na familia yako baada ya kustaafu Utumishi wa Umma.

Xavier M.Daudi

KAIMU KATIBU MKUU (UTUMISHI)."

The above letter was issued under Articles 36 (1) (2) of the Constitution read together with section 5(1) and 24 (1) of the Public Service Act, Rule

29(1) of the Public Service Rules 2003, and Order F40 of the standing orders, 2009.

The applicant's contention is that except for section 24(1) of the Public Service Act and rule 29(1) of the Public Service Rules 2003, the rest of the provisions were cited out of context. I will for easy of reference reproduce the cited provisions in extenso: Article 36(1) and (2) Reads:

> *"Article 36. -(1) Subject to the other provisions of this Constitution and of any other law, the President shall have authority to constitute and to abolish any office in the service of the Government of the United Republic.*
>
> *(2) The President shall have the authority to appoint persons to hold positions of leadership responsible for formulating policies for departments and institutions of the Government, and the Chief Executives who are responsible for supervision of the implementation of those departments and institution's policies in the Service of the Government of the United Republic, in this Constitution or in various laws enacted by the Parliament, which are required to be filled by appointment made by the President"*

As rightly stated by Mr. Mtobesya, Article 36(1) provides for the composition and abolition of offices by the President while Article 36(2) deals with appointments to fill the posts. They do not at all deal with the power to remove or retire. I thus agree that the two provisions were cited out of context.

Nevertheless, Mr. Mtobesya concedes that section 24 of the Public Service Act, Regulation 29(1), and order F 40 of the standing orders are

applicable and relevant on the matter at issue. Section 24 of the Public Service Act reads:

> *S 24. -(1) The **President may remove any public servant from the service of the Republic if the President considers it in the public interest so to do**. Except in the case of removal of a judge or other judicial officers, the procedure for the exercise of these powers shall be provided for in the regulations."(emphasis added)*

Regulation 29(1) reads:

> *"29. (1) Where the appointing authority is of the opinion that the President should be invited in the exercise of the powers conferred upon him by sub-section (1) of section 24 of the Act, the appointing authority shall, after consultation with the respective Minister, furnish to, the Chief Secretary through the Permanent Secretary (Establishments) particulars of the grounds warranting the exercise of powers of the President.*

And Order F40: *Removal in the Public Interest:*

> *(1) Except for public servants whose tenure of office is governed by the terms of the Constitution of the United Republic of Tanzania of 1977, the President may remove a public servant from the public service if he considers it is in the public interest to do so. The decision of the President that a public servant be removed from the service in the public interest may be signified through the Permanent Secretary (Establishments) in which case the procedures for removal shall be followed. The question of payment to such public*

servants pension or other terminal benefits shall be dealt with in accordance with the relevant terminal benefit schemes.

(2) Except where the President determines otherwise, no person shall have power to remove a public servant from the public service. Suggestion for removal or retirement shall be made by the Chief Executive Officer in person. In so doing, he shall give reasons why relevant disciplinary procedures could not be followed.

(3) Where the appointing authority is of the opinion that the President should be invited in the exercise of the powers conferred upon him by provision of paragraph (1), the appointing authority shall, after consultation with the respective Minister, furnish to the Chief Secretary through Permanent Secretary (Establishments) particulars of the grounds warranting the exercise of powers of the President.

(4) On receipt of particulars and reasons from the appointing authority, the Permanent Secretary (Establishments) shall, after consultation with the Minister, forward them to the Chief Secretary together with his recommendations.

(5) The Chief Secretary may, on receipt of particulars and reasons together with the recommendations of the Permanent Secretary (Establishments), submit the same to the President with his recommendations. If he is of the opinion that removal of the public servant should be dealt with otherwise than by involving the powers of the President, he shall refer the matter back to the Permanent Secretary (Establishments) with his

directives who shall also refer the matter back to the respective appointing authority."

There is no doubt that the above provisions are relevant in this matter. They confer on the President power to remove a public servant from office in the public interests. Both counsel agree on this point.

The applicant's contention however in ground d is that the provisions cited to purportedly retire the applicant provides for removal of one from public service. He suggested that both section 24 of the Public Service Act, and Rule 29 (1) of the regulations provide for removal and not retirement, condemning the decision maker in this matter for acting ultra vires assuming powers that she doesn't have. The learned State Attorney held a different view. He said, the words retire, and remove mean the same thing.

Admittedly, all cited provisions above provide for removal, and not retirement of public servants from public service. The court's attention was drawn to the decision of **AG V Said Juma Shekimweri,** supra). In this case, a similar issue was discussed. At the High Court, the trial judge had held that the provisions cited do not provide for retirement in public interest but removal. In an appeal, the Court of Appeal having subjected the issue to a thorough scrutiny citing with approval several Commonwealth decisions, concluded at page 24 that:

"Going by the persuasive authorities in the other Commonwealth countries ***we hold*** *that "****remove"*** *and* ***"retire" mean one and the same thing****. We, therefore, allow both the first and the fourth ground of appeal.* ***That is***

to say, the President had powers to retire the Respondent in public interest though the laws talk of remove but the two words are synonymous." (Emphasis added)

This position was also confirmed in **Permanent Secretary (Establishment) And the Attorney General V Hilal Hamed Rashid and 4 Others**, (supra).

I am bound by the above decisions. The distinction between removal appearing in the cited provisions and retirement argued by the applicant's counsel is therefore illusory. The word removal is identical to retirement and therefore the President had powers to retire a public servant from public service as done in this case.

This conclusion also resolves the complaint in paragraph e of the applicants' grounds. Since the two terms are synonymous used interchangeably, and having concluded that the decision maker was vested with powers, then the issue of embarrassment loses its legal parameter. As correctly submitted by the learned State Attorney, on appeal, in **Kimweris Case**, the Court of Appeal had this say at page 21 of its decision:

> *"If that letter had required the Respondent to show cause why he should not be retired, then there could have been the question of embarrassment on the ground that the Respondent could not know under which of the incompatible provisions the President was contemplating to retire him. However, that was not the case. The letter merely informed*

the Respondent of an irreversible action of the President. In that case we do not see how he was embarrassed."

Next question raised in grounds (a) and (c) are whether the applicant was entitled to a hearing and reasons for the decision. Clarifying on denial of a right to be heard, Mr. Mtobesya was persistent that the decision was given without affording the applicant the right to be heard contrary to the rules of natural justice hence fatal. I have given the argument serious thought and consideration.

It is clear to me that the law has put in place different procedures for retiring a person from public service, both voluntary and involuntary. Section 24(1) of the Public Service Act, Regulation 29(1), and Order F40 contemplate termination on non-disciplinary grounds. In fact, Order F 40 of the standing orders cited in the termination letter is drafted under the heading ***TERMINATION OF APPOINTMENT ON NON-DISCIPLINARY GROUNDS***. To my understanding, retirement in the public interest is different from dismissal based on specific charges. Whereas the latter is confined within defined parameters, the former is subject to great scope, determined in a situation where it is beyond comprehension that the behaviour of the public servant is unacceptable for public welfare. It is a resolution taken to remove undeserving public servants from public service in the public interest. In such a situation, I think, the disciplinary procedures, including charges, and hearing are not applicable. I support the learned State Attorney's position that in exercising her powers of retiring one from public service in the public interest, the President is not bound by the disciplinary procedures. This conclusion also finds support in **Cleaophas M, Motiba and others V**

The Principal Secretary Ministry of Finance and 2 Others, page 20 where, though interpreting a different provision of the law, the Court held.:

> *"The disciplinary procedures contained in section 19(1) and (2) are not applicable when the President exercises his powers under section 19(3) to remove a civil servant in public interest…."*

It is therefore safe, to conclude here that, unlike other forms of termination of employment on disciplinary grounds, the retirement of the applicant from public service in the public interest doesn't require the President to formally charge the applicant and accord him an opportunity to defend. This grounds also fails.

The decision maker in this matter is also criticized for failure to assign reasons for the decision. The applicant's argument is that the decision maker should have articulated the reasons for such a retirement while the learned State Attorney's contention is that there is no law compelling the President to define the public interest involved in a decision to remove a public servant from public service and if any, is not absolute. It is excepted where there is, *inter alia* an express provision that excludes compliance.

I have dissected the facts of the entire case and failed to find justification in the state attorney's position. Revocation of the applicant's post as a District Commissioner was officially communicated to him via a letter with reference No. CPF/K/6155/5 dated 18th November 2021 while the retirement complained of came later on 15th August 2022. As correctly submitted by Mr. Mtobesya, at the time of his retirement, the Applicant

was no longer serving as a District commissioner and therefore not subject to the National Security Act as suggested by the learned State Attorney. In any case, the retirement letter could have so specified.

It is a principle well settled that, the right to give reasons has its bearing on one's Constitution rights in seeking redress as it reduces the possibility of arbitrariness and abuse of power in the decisions making process. See the decision in **Tanzania Air Services Limited v The Minister for Labour and 2 others**, (H/C) Civil application No 1 of 2015 where citing with approval the extract from the **Administrative Law book**, 6th ed at 548 by **Professor H W R Wade,** Hon Sammata JK (as he then was) observed:

> *"Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. A right to reason is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over others. "*
>
> *... `Reasoned decisions are not only vital for the purpose of showing the citizen that he is receiving justice: they are also a valuable discipline for the tribunal itself ... for decisions generally a statement of reasons is one of the essentials of justice."*

And in **James F Gwagilo V Attorney General,** 1994 TLR 73 (HC) the court held:

"(*ii)Termination of a civil servant at the will of the President is not the same thing as removal in the public interest; in the former the president need not show the cause for the discharge while in the latter he must show the public interest being served.*

(iii) When removing a civil servant in the public interest, the President is bound to give reasons indicating the public interest to be served; under the Constitution the civil servant so removed has the right to appeal against, or to apply for judicial review of, that removal and if no reasons are given therefore, that constitutional right will be rendered ineffective and illusory;

(iv) Disclosure of reasons for removal of a civil servant in the public interest is also necessary so as to reduce the possibility of casualness, arbitrariness and abuse of power in the decision-making process and to instill public confidence in it and maintain its integrity, and to satisfy a basic need for fair play;"

I am persuaded by the above decisions. I am thus settled that the requirement of giving reasons is one of the underlying conditions of any fair and just decision affecting one's right. The President's decision in this matter is faulty for failure to articulate reasons. The prayer for an order of certiorari is valid. I allow the same, quash and set aside the President's decision purporting to retire the Applicant from public service in the public interest. Since no reason was given, the first respondent, **Permanent Secretary, Public Service Management & Good Governance** is

compelled to reconsider the applicant's application for reinstatement in his position in accordance with the law.

Costs to follow the event. Order accordingly.

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Dated at **Dar es salaam,** this **8th Day** of **February** 2024

E. Y MKWIZU

JUDGE

8/2/2024

COURT: Right of Appeal explained

E. Y MKWIZU

JUDGE

8/2/2024