

**IN THE HIGH COURT OF TANZANIA
(DODOMA SUB REGISTRY)**

AT DODOMA

MISC. CAUSE NO. 2440 OF 2024

In the matter of an Application for Orders of Certiorari, Mandamus and Prohibition

And

In the matter of Application to Challenge the Decision of the Dodoma City Council of Dodoma to Demolish the Structures Built on Plot No. 9 Block 15 at Mji Mpya within Dodoma City

BETWEEN

MOHAMED JABRI SUNDAY (Administrator of the Estate of the Late Jumapili Mohamed Sunday)..... APPLICANT

Versus

THE DODOMA CITY COUNCIL.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

Date of last order: 14th May, 2024.

Date of Ruling: 31st May, 2024.

E.E. KAKOLAKI, J.

In this application the applicant is seeking for grant of leave to file an application for prerogative orders of certiorari, mandamus and prohibition against the 1st respondent's decision and act of demolishing his structure under construction on Plot No. 9 Block 15 at Mji Mpya within Dodoma. The application is preferred under section 2(2)(3) of the Judicature and Application of Laws Act, [Cap. 258 R.E 2002], sections 17(2) and 18(1) of the Law Reform (Fatal Accidents Miscellaneous Provisions) Act, [Cap. 310 R.E 2019] and Rules 4, 5(1), (2) and (3), and 7(1)(2) and 5 of the Law Reform (Fatal Accidents Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014,

G.N. No. 324 of 2015, Article 13(6)(a) and (c) of the Constitution of the URT, 2077 and section 95 of the Civil Procedure Code, [Cap. 33 R.E 2019], supported with the applicant's affidavit and statement containing the grounds as to why this court should grant the application. Its merit is vehemently challenged by the Respondents who filed a joint counter affidavit to that effect, inviting the Court to dismiss it with costs.

Briefly the applicant who is suing as administrator of the estate of the late **Jumapili Mohamed Sunday**, the owner of Plot No. 9 Block 15 located at Mji Mpya within Dodoma City, alleges to have applied and obtained a building permit from the 1st respondent and commenced his construction activities according to the authorized building plans, before on 24/11/2023 he witnessed the 1st respondent's officer demolishing the foundation on that site worth Tshs. 154,703,850/-, without issuance of any notice of demolition or non-compliance of development conditions, thus causing him to suffer financial loss. It is from that unwarranted 1st respondent's act the applicant avers this application is preferred for orders of certiorari, mandamus and prohibition against the whole process and decision of demolishing the structures under construction on the above cited plot.

At the hearing stage both parties appeared represented and were heard viva voce as the applicant hired the legal services of Mr. Emmanuel Bwire, learned advocate while the 1st and 2nd respondents represented by Mr. Nicodemus Abweyo and Ms. Helen Njowoka, both learned Stated Attorneys.

It is a settled law as stated in the case of **Emma Bayo Vs. The Minister for Labour and Youths Development and 2 Others**, Civil Appeal No. 79 of 2012 (CAT-unreported), the case which was also relied on by the applicant in his submission that, for the Court to grant an application for leave to file application for prerogative orders, the applicant must have established first to the court that there is existing **one**, arguable issues for determination of the Court in the main application, **second**, the application is preferred within six months of the decision sought to be challenged and **thirdly** that, the applicant has sufficient interest on the matter to be allowed to bring the main application. It is so as application for leave is a necessary step to an application for the prerogative orders as the purpose for that stage is to give the court an indication that an applicant has sufficient interest in applying for the orders. See also the case of **Attorney General Vs. Wilfred Onyango Mganyi @ Dadii and 11 Others**, Criminal Appeal No. 276 of 2006 (CAT-unreported).

Submitting in favour of the application Mr. Bwire having obtained leave of the Court to adopt both applicant's affidavit and reply to counter affidavit as well as the statement containing grounds upon which this court should grant the application, convincingly argued that, the applicant has met all the three conditions for the grant of leave to apply for prerogative orders as spelt out in the case of **Emma Bayo** (supra). He contended in compliance of the first condition that, the applicant is aggrieved with the 1st respondent's decision of

demolishing the structure under construction despite of applying and be issued with valid permit by the said 1st respondent as shown in the affidavit and statement filed in this Court. On the second condition as to whether the application is within 6 months limitation period within which to seek judicial review of the public body's decision subordinate to the High Court, he submitted, the condition has been met since the cause of action arose in November, 2023 and the application on 14/02/2024 which is within 6 months. As to the third condition, whether the applicant has demonstrated sufficient interest to be allowed to bring the main application, he voiced, being an administrator of the estate of the late Jumapili Mohamed Sunday who was the owner of Plot No. 9 Block 15 at Mji Mpya within Dodoma, the applicant has sufficient interest in the matter, hence all the three conditions are met. He thus invited the Court to grant the application.

In rebuttal Mr. Agweyo having adopted the joint counter affidavit and reply statement by the respondent to form part of his submission, contended that the applicant has no shown sufficient interest being one of the prerequisite condition for grant of the application since his tenure of the right of occupancy in the disputed plot expired way back 1978 and that, during urban renewal exercise in 1980 and 1981 was paid compensation to the tune of Tshs. 176,000/- and given an alternative Plot No. 55 Block 7, Chinangali West, within Dodoma City, as evidenced in annexure OSG1 of the counter affidavit. Whether the applicant was issued with valid building permit as alleged he

countered that, there was no evidence to that effect as the 1st respondent has never issued him one. As to the condition of existence of arguable case for consideration in the main application he said, the applicant was issued with two notices before demolition of the alleged structure upon expiry of 30 days, hence no arguable case and proof of interest on the matter since the issue of ownership of the land is also contested. Additionally he argued, the relief of certiorari sought by the applicant cannot benefit him as the structure has already been demolished. And on the last condition, no response was made by Mr. Abwayo apart from inviting the court to find the applicant has failed to demonstrate existence of necessary conditions for grant of the application, hence dismiss the application.

In rejoinder Mr. Bwire maintained his submission in chief while responding to the respondents' submission that, the invitation extended to the Court by the respondents on the facts to be considered at this stage has overstretched to cover issues that are in the domain of the Court when entertaining the main application for leave, since at this stage court's consideration is limited to establishing whether it is properly moved as the question of whether compensation was paid or not should be reserved for determination by the Court in the main application. He was insistent that, in this matter since the applicant seeks to challenge the demolition decision based on the notice issued by the 1st respondent to the applicant, then the application is within

the precincts of this Court and deserve to be granted as the applicant has met all the three conditions. He thus prayed the Court to grant the application.

I have dispassionately considered the fighting arguments from both parties and took time to revisit the affidavit, joint counter affidavit and reply to counter affidavit in support and against the application. What both parties are at one is on the fact that, the structure in Plot No. 9 Block 15 at Mji Mpya within Dodoma was demolished under 1st respondent's order. It is also uncontroverted fact that, the application has been preferred within six months of accrual of cause of action which is 23/11/2023, hence satisfaction of the 2nd condition for the grant of application for leave to file prerogative orders as correctly submitted by Mr. Bwire. What remains in dispute is whether there is arguable case for determination by this Court in the main application and whether the applicant has shown sufficient interest to be allowed to bring the main application.

To start with the first issue, it is Mr. Agweyo's contention that since the applicant was issued with two notices prior to demolition exercise over the alleged structure in Plot No. 9 Block 15 at Mji Mpya within Dodoma, the land which the applicant was once compensated with both monetary and a plot in alternative to the one owned earlier, and given the fact that the issue of ownership of the said plot is still at dispute, then there is no arguable case for determination in the main application. Mr. Bwire while disputing the fact of issuance of notice by the 1st respondent before demolition order, urged this

court to refrain from entertaining issues of compensation as treating it otherwise is tantamount to overstretching its duties at this stage for determining issues that ought to be entertained in the main application.

While Mr. Bwire convincingly urged this Court to reserve for determination in the main application the issue of compensation, he acquiesced on the issue as to whether dispute over issuance or not of notice by the 1st respondent prior to demolition of the structure in the disputed land in Plot No. 9 Block 15 at Mji Mpya within Dodoma, could constitute arguable case in pendency of ownership dispute over the same Plot. With due respect to Mr. Bwire, I do not find how can that issue of issuance or not of notice by 1st respondent constitute arguable case for determination by the Court in pendency of dispute over ownership of the land in Plot No. 9 Block 15 at Mji Mpya within Dodoma as seen in paragraph 3 of the respondents' counter affidavit when averred that, it does not belong to him for being fairly compensated with both monetarily and given alternative plot, while at the same time the applicant is claiming in paragraph 1 of the affidavit to belong to him. Had the applicant resolved the issue of ownership of the disputed plot first before filing this application, I would have no difficulties in finding that, arguable case has been established for the Court to determine as to whether the 1st respondent's decision to demolish the alleged structure in the plot at dispute was justified or not. Since the issue of ownership over the disputed land (plot) is still unresolved, I find the dispute as to whether demolition by the 1st respondent

was justified or not does not constitute arguable case in this matter for allowing the applicant to bring the main application.

Lastly is whether the applicant has sufficient interest in the matter to allow him bring the main application. Mr. Agweyo maintained that, since the issue of ownership of the plot is unresolved then he has failed to demonstrate to the court's satisfaction existence of such sufficient interest warranting the Court to allow him bring the main. As alluded to above Mr. Bwire did not respond on the issue of ownership believingly the same is reserved for determination by the Court in the main application together with the issue as to whether compensation was paid or not to the applicant as alleged by the Respondents. As already found when deliberating on the issue as to whether there is arguable case or not, the issue of who is the owner of the dispute plot ought to be resolved first before filing this application as it cannot be so done in this matter given undisputed fact this is not a land court to determine ownership. In view of that clear position this Court can hardly find the applicant to have any interest on the matter leave alone sufficient one, hence the third condition is not established too.

As the three conditions have to be met cumulatively, since the applicant has managed to establish existence of the 2nd condition only that the application is preferred within the period of six months and failed to do for two others, coupled with the fact that, there is pending unresolved issue of ownership of

the land in Plot No. 9 Block 15 at Mji Mpya within Dodoma, I find the application is not proved to the required standard.

All said and done this application is without merit and the same is hereby dismissed.

Each party to bear own costs.

Order accordingly.

Dated at Dodoma this 31st May, 2024.



E. E. KAKOLAKI
JUGDE
31/05/2024.

Court: The Ruling has been delivered at Dodoma today on 31st day of May, 2024, in the presence of the Mr. Emmanuel Bwire, advocate for the Applicant, Mr. Nicodemus Agweyo, State Attorney for the 1st and 2nd Respondents and Ms. Veradina Matikila, Court clerk.

Right of appeal explained.



E. E. KAKOLAKI
JUGDE
31/05/2024.

