

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

**IN THE SUB-REGISTRY OF MWANZA**

**AT MWANZA**

**MISC. CIVIL APPLICATION NO. 25518 OF 2023**

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

**BETWEEN**

**HAMIS SWAHIBU FUPI T/A SHUSHAI INVESTMENTS ..... APPLICANT**

**AND**

**GEITA TOWN COUNCIL .....1<sup>ST</sup> RESPONDENT**

**THE REGIONAL COMMISSIONER, GEITA REGION .....2<sup>ND</sup> RESPONDENT**

**REGIONAL ADMINISTRATIVE SECRETARY,**

**GEITA REGION.....3<sup>RD</sup> RESPONDENT**

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

**RULING**

5/12/2023 & 16/2/2024

**ROBERT, J:-**

This is an application for leave to apply for orders of certiorari, mandamus, and prohibition brought by the Applicant, Hamis Swahibu Fupi T/A Shushai Investments, against Geita Town Council (1st Respondent), the Regional Commissioner, Geita Region (2nd Respondent), Regional

Administrative Secretary, Geita Region (3rd Respondent), and the Attorney General (4th Respondent).

The Applicant seeks leave to challenge the decision of the 1st, 2nd, and 3rd Respondents ordering the demolition of three structures, comprising toilets, a kitchen, and an office, located in a commercial property at Maua area, Geita Township, operated by the Applicant. The Applicant also seeks leave to apply for an order of mandamus to proceed with his investment as approved by the 1st Respondent, and an order of prohibition preventing the 1st, 2nd, and 3rd Respondents from demolishing the said structures.

At the hearing, the Applicant was represented by Mr. Geoffrey Kange, while Mr. Felician Daniel, State Attorney, appeared for the Respondents.

Mr. Geoffrey Kange, representing the Applicant, anchored his arguments on legal provisions and case law. The application was brought under section 2 (1) and (3) of the Judicature and Application of Laws Act, Cap 358, and section 17(2) and 18 of the Law Reform (Fatal Accident and Misc. Provisions Act, Cap 310). He also invoked Rule 5 (2) (3) (4) (5) and (6) of the Law Reform Fatal Accident and Misc. Provisions (Judicial Review Procedure) Rule GN No. 324 of 2014.

Mr. Kange, argued that the application met the conditions set out in the case of **Ena Bayo Vs Minister for Labour & Youth Development & 2 others, Civil Appeal No. 78/2012**. He specifically emphasized the requirement to establish an arguable case. Counsel submitted that the Applicant had satisfied this condition by outlining the dispute arising from a lease agreement between the Applicant and the 1st Respondent. According to him, the interference by the 2nd Respondent, the Regional Commissioner, without affording the Applicant the right to be heard, constituted an arguable case.

The Applicant's counsel further contended that the decision of the 2nd Respondent, as implicit in the attached correspondence, justified the application. He also argued that the interference by the Regional Commissioner in the contractual relationship warranted the court's intervention.

Mr. Felician Daniel, State Attorney, challenged the arguability of the case, asserting that the Applicant failed to attach the decision of the Regional Commissioner or Regional Administrative Secretary in paragraphs 8, 9, 10, and 13 of the Applicant's affidavit. He argued that, without the decision, the Applicant did not establish an arguable case. Mr. Daniel also contended that

the matter involved contractual relations and, according to the case of **Assistant Registrar of Building Vs Frederick Kibwana** 1987 TLR 84, certiorari cannot be issued in a commercial or business relationship. He also invoked the case of **F. 3329 CPL Buberwa Leonard Magayane and another Vs Minister for Home Affairs and 2 others**, Civil Appeal No. 119 of 2020, asserting that, similar to that case, an arguable case was not made out.

In response to the contractual nature of the dispute, Mr. Daniel referred to the case of **Abadiah Selehe Vs Dodoma Wine Company Limited** 1990 TLR 113 HC, emphasizing that where there is another convenient and feasible remedy, mandamus is not an appropriate remedy. He argued that the lease agreement required the parties to resolve the matter amicably, and the Applicant had other convenient and feasible remedies available.

The Court agrees with the Applicant's counsel that an arguable case has been made out. The interference by the Regional Commissioner, as alleged, and the subsequent directive to demolish structures represent a dispute that warrants judicial review. The decision may affect the Applicant's rights and interests in the disputed property. The court finds support in the case of **Emabayo Vs Minister for Labour & Youth Development & 2 others**,

Civil Appeal No. 78/2012, which emphasized the need to establish an arguable case before granting leave.

On time limitation, the Court notes that, the application was filed within six months of the letter ordering the demolition, satisfying the requirement of the second condition. This is in line with the provisions of section 17(2) of the Law Reform (Fatal Accident and Misc. Provisions Act, Cap 310) and Rule 5 (4) of the Law Reform Fatal Accident and Misc. Provisions (Judicial Review Procedure) Rule GN No. 324 of 2014.

On Sufficient Interest, the Court finds that, the Applicant demonstrated sufficient interest by outlining the potential impact of the decision on his business operations and investments. This meets the requirement set out in the case of **Latang'amwaki Ndwati & 7 others Vs AG**, Misc. Civil Application No. 178 of 2022 and section 18 of the Law Reform (Fatal Accident and Misc. Provisions Act, (Cap 310).

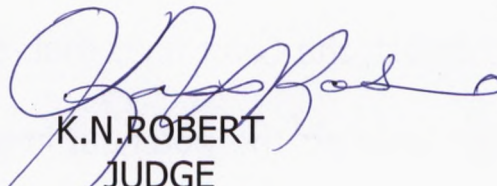
Having considered and analyzed the submissions and the applicable legal principles, the Court grants leave to the Applicant to file the main application within fourteen days from the date of this ruling.

The Court further orders that, pending the determination of the main application, the status quo shall be maintained, and the 1st, 2nd, and 3rd Respondents are prohibited from demolishing the structures in question.

Considering the circumstances of this application, the Court orders that each party shall bear their own costs of this application.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
16/2/2024