IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA SUB REGISTRY

AT TABORA

MISC. CIVIL APPLICATION NO. 8 OF 2023

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

IN THE MATTER OF THE POLICE FORCE AND AUXIALIARY SERVICE COMMISSION ACT, [CAP. 241 R.E. 2019]

BETWEEN

PF 15601. ASP BHOKE JULIUS BURUNNA .....APPLICANT

VERSUS

INSPECTOR GENERAL OF POLICE .....1ST RESPONDENT

THE ATTORNEY GENERAL .....2ND RESPONDENT

RULING

Date of Last Order: 27/03/2024
Date of Ruling: 30/05/2024

MANGO, J

The Applicant, PF 15601. ASP Bhoke Julius Burunna, seeks leave to file an application for orders of *certiorari* to quash and set aside the decision and order of the Inspector General Police dated 01st July 2019 and *mandamus* to compel the Respondents to issue him with copy of proceedings leading to and decision to terminate him from employment.

The application was brought through a Statement accompanied by Chamber Summons made under S. 17(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [Cap 301, R.E 2019], Rule 5(1)(2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules 2014 G.N No. 324 of 2014 and S. 2(1) of the Judicature and Application of Laws Act, Cap 358 R.E 2019. An affidavit sworn by PF 15601. ASP Bhoke Julius Burunna, the Applicant herein, supported the application.

Briefly, the application indicates that, the Applicant was formerly employed as a police constable and promoted up to Assistant Superintendent of Police. In 2018 he was arraigned before the Resident Magistrate Court of Tabora charged with the offence of conspiracy to commit an offence contrary to S. 384 of the Penal Code,[Cap 16 R.E 2002] and stealing contrary to S. 258(1) and 265 of the Penal Code [Cap 16 R.E 2002]. He was also charged with failure to take reasonable and necessary precautions to prevent arms from falling into possession of unauthorized persons contrary to S. 32(1) and (2) of Arms and Ammunitions Act [Cap 223 R.E 2002]. After full trial, he was convicted as charged.

Aggrieved with the decision of the Resident Magistrates Court of Tabora, he successfully appealed to the High Court where in the year 2018 he was acquitted. After being acquitted, the Applicant applied to be reinstated to work. Unfortunately he was served with notice of disciplinary charges against him on 10th October 2018, and on 01st July 2019 he was terminated from work. He requested to be supplied with copies of

proceedings that led to his termination and the decision to that effect but in vain.

Disgruntled, the Applicant lodged this application for leave to file an application for orders of *certiorari* and *mandamus* to quash an order for termination of his employment given by the 2nd Respondent and executed by the Regional Commander of Police for Tabora. Paragraph 10 of the Applicant's affidavit states that;

i. The IGP dismissed him from service of the Force without jurisdiction in absence of a termination letter from the Permanent Secretary of the Ministry of Home Affairs
ii. The charge and notice were wrongly prepared by the IGP without jurisdiction
iii. Proceedings leading to and dismissal order are illegal for violating the right to a reasoned decision and fair trial for the IGP was a complainant
iv. The Applicant was denied copy of decision and the right to know the reason for the decision.

Before me, the applicant enjoyed legal services of Mr. Kelvin Kayaga, learned advocate while the respondents were represented by Mr. Samwel Mahuma learned State Attorney and Assistant Inspector Dustan Mkisa, learned Advocate who appeared as a legal officer from the office of the first Respondent.

In support of the Application Mr. Kelvin adopted the contents of the Applicant's affidavit and contended that, the application meets the guidance provided for in the case of **LHRC Vs Minister of finance and Planning and 2 others**, Misc. Cause No. 42/2022 wherein the Court enumerated what

should be proved by the applicant for leave to file judicial review that is; existence of arguable case, individual interest, exhaustion of all available remedies and to establish that the application was preferred within time.

On the first requirement, Mr. Kelvin highlighted that the contents of the affidavit particularly paragraph 10 establishes that there is arguable case that need determination by way of judicial review.

On the issue of interest, Mr. Kelvin pointed out that, the Applicant has sufficient interest in this matter since the actions by the IGP which are subject of the intended judicial review proceedings have affected the Applicant's right to work.

On the issue of time limit Mr. Kelvin referred this court to paragraph 9 of the Applicant's adopted affidavit which establishes that, the Applicant was granted extension of time to file this application by this Court on 25/07/2023 and this application was filed within the time extended by the Court.

On exhaustion of all available remedies, the learned advocate is of the view that, the Applicant deserve to be considered that he exhausted all available remedies due to the circumstances in this matter. He argued that, the first Respondent limited the efforts by the Applicant to pursue any available remedy by his failure to supply the Applicant with the copy of proceedings and termination decision. He argued further that, the Applicant could not have acted anyhow since he has not been supplied with the copy of decision. It was his contention that judicial review is the only way the Applicant can move the Court to compel the first Respondent to supply him the decision. He referred this Court to the case of **Tanzania Leaf Tobbaco Company Limited (TLTC) v. Godfrey Joseph Gobbo and Another**, Civil Appeal No. 235 of 2022 (unreported), where the Court of Appeal observed

that, the employer cannot claim that the Applicant has not exhausted internal remedies in case where the copy of the decision sought to be challenged is not supplied to him. He therefore prayed for this application be granted.

In reply submission, Mr. Mahuma, learned State Attorney, began his submission by adopting the contents of the counter affidavit filed jointly by the Respondents to form part of their submission. He argued that, the allegation that the Applicant was not been supplied with copy of the decision is not supported by any evidence. He pointed out that, the Applicant has not availed the Court with any proof of his alleged follow ups or even requests for the copy of proceedings and decision from the relevant offices. He is of the view that, by his failure to prove efforts made in requesting for the said documents, the Applicant cannot claim that the first Respondent has refused or has not supplied him the documents.

On the issue of exhaustion of internal remedy, it was the Attorney's view that, the Applicant has not exhausted available remedies. He argued that, the Applicant seeks to challenge the decision of the Inspector General of the Police (IGP), which is not final as far as disciplinary proceedings of the Applicant are concerned. He distinguished the case of **Tanzania Leaf Tobbaco** cited by the Applicant's counsel as irrelevant to the case at hand because it concerns employment disputes while the application at hand is judicial review.

On his part, Mr. Mkisa, stressed that, the Applicant did not establish any arguable. He argued that, as far as the Applicant has not been supplied by the copy of the decision and proceedings that led to his termination, he cannot claim to have established existence of an arguable case. He referred this Court to the case of **F.3329 CPL Buberwa Leonard Magayane & Another vs Minister for Home Affairs & Others (Civil Appeal No.119 of 2020) [2023] TZCA 17399 (10 July 2023)** wherein the Court of Appeal held that the Applicant cannot establish existence of an arguable case in absence of necessary documents establishing the same.

He also submitted that, the Applicant cannot establish that he has sufficient interest in the prospective judicial review proceedings in absence of the decision that is subject to this application.

On the alleged failure to be supplied with copy of proceedings and decision sought to be challenged, Mr. Mkisa argued that, the Applicant has never requested for the same from the appropriate authority. He stated that, proceedings of the case and its final decision can only be supplied to the Applicant by Permanent Secretary of Ministry of Home affairs who is not party to this application. Mr. Mkisa doubted even enforceability of the orders sought by the Applicant if the same will be granted by this Court. He is of the opinion that, the order of mandamus if granted, it will not be executable since it will be directed to the IGP who cannot anyhow supply the Applicant with the documents needed by the Applicant. He concluded on this part by pointing out that, the Permanent Secretary of Ministry of Home affairs is the responsible officer for hiring and firing. Thus, the Applicant, if he so wishes,

should request the documents from the Permanent Secretary and not the IGP.

Addressing the question of exhaustion of available remedy, the Attorney insisted that, the Applicant has not yet exhausted available remedies in challenging the decision of the IGP. He cited Regulation C.3 of the Police Service Regulations, which provides that, a police officer with the rank of Assistant Inspector to Assistant Commissioner, their disciplinary authority is the IGP. Any person aggrieved by the decision of the IGP may appeal to the Police Commission before approaching the Court for judicial review. He prayed the application be struck out.

In his rejoinder, advocate Kayaga reiteration his submissions in chief. He added that, even if it will be considered that the Applicant did not apply for the copy of decision, being supplied with the decision that affects ones rights is a matter of right and not a privilege. He insisted that, the fact that he was not supplied with the copy is a proof of existence of arguable case in this application.

Advocate Kayaga concluded that, the Applicant has no cause of action against the Permanent Secretary, the cause of action is against the IGP who acted improperly. It was his view that, the application is properly before this court, he prayed the same to be granted.

I have dispassionately considered the oral submissions from both counsel and read the documents filed in this application. As I embark on determination of this application, I pay my gratitude to all legal counsel for their splendid submissions and their conduct in the entirety of these proceedings. At this point, this Court will assess whether this is a fit case in respect of which leave should be granted.

Before discussing other issues, I see it pertinent to start with the last issue that is; exhaustion of all available remedies. It is not disputed that at the time of his termination from employment, the Applicant's rank was below Senior Assistant Commissioner. The disciplinary authorities and procedures in respect of police officers depends on their respective ranks. The proceedings are regulated by the provisions of the Police Force and Prisons Service Commission Act [CAP 241 R.E.2002] and the Police Force Service Regulations G.N 161 of 1998.

Records show that, termination of the Applicant from employment was effected by the IGP through the Regional Police Commissioner for Tabora. I subscribe to the contention by Respondents' counsel that the IGP is the not the final disciplinary body dealing with police officers with ASP rank, admittedly the Applicant on his affidavit under paragraph 10(i) stated that the IGP has no jurisdiction to terminate him from employment. Section 7(3) of the Police Force and Prisons Service Commission Act No. 8 of 1990 and Regulation C.3 of the Police Force Service Regulations provides for disciplinary authority for ranks below Senior Assistant Commissioner. According to the cited provisions the final disciplinary authority for such officers is vested in the Commission. The Applicant falls under the category of officers covered under the cited provisions. Other powers of the Commission are provided under Regulation B.5 which include powers to appointment, confirmation and termination employment. The Commission may also depute its powers to the Permanent Secretary.

From the above provisions, it is evident that the decision of the IGP was not final, the Applicant according to his rank, had an alternative of

referring his grievances to the Commission or Permanent Secretary if deputed to act on behalf of the Commission.

It is a well-established principle that, grant of leave may be refused if there is some other remedy, judicial or non-judicial, which is available to the Applicant for review, and which is equally or more appropriate. The alternative remedy may be in the form of statutory right of appeal or a contractual right to review or appeal. See the case of **Halima James Mdee & Others vs Registered Trustees of Chama Cha Demokrasia Na Maendeleo (CHADEMA) & Others (Misc. Cause 27 of 2022) [2022] TZHC 10476 (8 July 2022).**

In that regard, I find the Applicant to have failed to exhaust available remedy of referring his grievances to the Commission before approaching the Court for an application for leave to file judicial review.

I am aware that among the Applicant's grievances is to be supplied with the copy of proceedings and decision that terminated him from employment. In this, I agree with the Respondents' counsels that, the Applicant has requested for such documents to the extent of filing an application for leave to apply for the order of mandamus against a wrong party. The law, regulation C.3 (3) and C.3 (4) of Police Force Regulations provide that, the powers to determine a punishment against a senior officer where the offence attracts a dismissal, termination of appointment, reduction of rank and reduction of salary is vested to the Permanent Secretary. According to the cited provisions, the powers of IGP in this aspect is limited to submission of an investigation report to the Permanent Secretary. Regulation C.3 (4)(b) provides specifically that the duty to inform

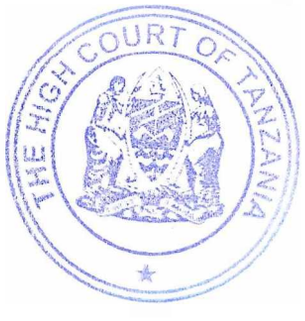
the accused officer of his punishment is vested to the Permanent Secretary. The provision reads;

> "(4) Where a report is submitted by the Inspector General under this regulation the Permanent Secretary shall consider the report and-
>
> (a)N/A
>
> (b)Shall after considering any further report, determine the punishment, if any, **to be inflicted and inform the accused officer of such determination.**" (Emphasis added)

Thus, it is clear that the Applicant deserves to be informed of the dismissal punishment inflicted against him by the Permanent Secretary and not the IGP.

For afore stated reasons, I see no need to discuss the rest issues as this issue suffices to dispose of the entire application. The application is hereby struck out for being incompetent before this Court. I order no costs.

Dated at Tabora this 30th day of May 2024



Z.D. MANGO

JUDGE