

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

**(MAIN REGISTRY)**

**AT DODOMA**

**MISCELLANEOUS CIVIL CAUSE NO. 8968 OF 2024**

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR PREROGATIVE ORDER OF CERTIORARI AND MANDAMUS BY NANDHRA ENGINEERING AND CONSTRUCTION COMPANY LIMITED**

**AND**

**IN THE MATTER OF LAW REFORMS (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) ACT. [CAP.310 R.E 2019]**

**AND**

**IN THE MATTER OF THE LAW REFORMS (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) (JUDICIAL REVIEW PROCEDURE AND FEES) RULES G.N NO.324 OF 2014.**

**AND**

**IN THE MATTER OF LAW OF LIMITATION ACT [CAP.89 R.E 2019]**

**AND**

**IN THE MATTER OF APPLICATION TO CHALLENGE THE DECISION OF THE MINISTER OF CONSTITUTIONAL AND LEGAL AFFAIRS REJECTING TO GRANT EXTENSION OF TIME TO FILE FRESH SUIT BY THE APPLICANT IN ACCORDANCE SECTION 44 (1) AND (2) OF LAW OF LIMITATION ACT [CAP 89 R:2019], ARGUING THAT THE MATTER WAS DETERMINED BY THE COURT WHILE WAS NOT DETERMINED.**

**BETWEEN**

**NANDHRA ENGINEERING AND CONSTRUCTION**

**COMPANY LIMITED ..... APPLICANT**

**VERSUS**

**THE MINISTER OF CONSTITUTIONAL**

**AND LEGAL AFFAIRS ..... 1ST RESPONDENT**

**THE ATTORNEY GENERAL. .... 2ND RESPONDENT**

**RULING**

**21/06/2024 & 24/06/2024**

**MANYANDA, J.:**

The Applicant, a legal person based in Dar es Salaam, through a Chamber Summons supported by an affidavit sworn by Daman Singh Nandhra, applicant’s principal officer, drawn under Sections 17(2) and 18(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act (Cap. 310 R.E. 2019); and Rules 4, 5(1), (2) and (6) and Rule 7(5) of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review and Fees) Rules, 2014, GN No. 324 of 2014) is requesting this Court to grant leave to her to file an application for judicial review praying for orders of certiorari and mandamus to quash the decision of the 1<sup>st</sup> Respondent dated 1<sup>st</sup> December, 2023 and Compel him to grant extension of time to the Applicant to file fresh suit in the High Court.

A brief background of this matter is that in December, 2013, the Applicant entered into an agreement with a firm called Ambiere Real Estates Ltd to construct a two storied house in Mtwara Municipality for consideration of Tshs. 918,221,000/=. According to the Applicant, the construction work was done to the hit, however, her client refused to pay a remaining amount of Tshs. 453,543,004/=, act which necessitated her to file Civil Case No. 70 of 2018 on 19<sup>th</sup> day of April, 2018.

Then, it happened that on 20<sup>th</sup> day of June, 2023 the said case was struck out following sustenance of a legal issue raised *suo motu* by the Court questioning applicant's capacity to file the case without board of directors' resolution. She intends to refile her case but the six years time limit for filing a suit based on contract prescribed by the Law of Limitation Act had already elapsed during pendency in court of Civil Case No. 70 of 2018.

She approached the 1<sup>st</sup> Respondent for extension of time pursuant to section 44 of the same law but, to her dismay, the said 1<sup>st</sup> Respondent refused to do so on reasons that her case was finally determined in court, hence, his power to extend time ceased. It is her stance that since the case was not determined on merit, it cannot be

said that it was finally determined, therefore the 1<sup>st</sup> Respondent still have the power he is endowed with under the provision of the law.

She has come to this Court in order to be granted with a fiat to challenge the 1<sup>st</sup> Respondent by way of judicial review in order to have his decision quashed and be directed to do the needful.

Hearing of this matter, with leave of the court was conducted by way of written submissions, the Applicant's submissions were drafted and filed by Mr. Laurent Ntanga, learned Advocate, while Mr. Elias Athanas, Principal State Attorney and Ms. Jenipher Kaaya, Senior State Attorney drafted and filed the submissions for the Respondents.

The rationale behind requirement for obtaining leave before making application for judicial review is to check unnecessary matters. In an English case of **R. Vs. T.R.C, Exp National Federation of Self Employed and Small Business Ltd** [1982] A.C 617, Lord Diplock stated the said rationale at page 643 as follows: -

*"The requirement of permission is designed to filter out applications which are groundless or hopeless at early stage. The purpose is to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints of administrative error and to remove the uncertainty in which public authorities might be left."*

In our jurisdiction, the said rationale was stated by His Lordship Mwalusanya J, in the case of **John Mwombeki Byombalirwa vs. The Regional Commissioner and Regional Police Commander, Bukoba** [1986] TLR 73 at Page 75 as follows: -

*"Judicial Review is an important weapon in the hands of judges of this country by which an ordinary citizen can challenge oppressive administrative action and judicial review by means of prerogative orders (certiorari, prohibition and mandamus) is one of those effective ways employed to challenge administrative action. **It is my conviction that the courts should not be eager to relinquish their judicial review function simply because they are called upon to exercise it in relation to weighty matters of state, equally however it is important to realize that judicial review is not the same thing as substitution of the court's opinion on the merits for the opinion of the person or body to whom a discretionary decision a making power has been committed.**" (emphasis added)*

Therefore, the purposes behind seeking leave for prerogative orders are; first, to filter out applications that are groundless or hopeless at an early stage; second, is to prevent the time of the court from being wasted by busy bodies with misguided or trivial complaints of

administrative errors; and three, is to remove uncertainty in which public authorities may be left with such frivolous or groundless judicial review actions.

The guidance is as was laid down in the English case of **Re-Hirji Transport Services** [1961] All ER 88 where the condition for grant of leave was stated to be establishment of a prima facie case.

In Tanzania the conditions were stated in the famous case decided by the Court of Appeal of Tanzania, the case of **Emma Bayo vs The Minister for Labour and Youths Development and 2 others**, Civil Appeal No. 79 of 2012, where it was stated as follows: -

*"It is at the stage of leave where the High Court satisfies itself that the applicant for leave has made out any arguable case to justify the filing of the main application. At the stage of leave the High Court is also required to consider whether the applicant is within the six months limitation period within which to seek a judicial review of the decision of a tribunal subordinate to the High Court. At the leave stage is where the applicant shows that he or she has sufficient interest to be allowed to bring the main application. We cannot but emphasize our restatement of the law in **Attorney General vs. Wilfred Onyango Mganyi @ Dadi & 11 Others** (supra) to the effect that an "application for leave is a necessary step to an*

*application for the orders. The purpose for this "step" is to give the court an indication that an applicant has "sufficient interest in applying for the orders".*

Further conditions include absence of alternative remedy as discussed by this Court in the cases of **Alfred Lakaru vs. Town Director** (Arusha) [1980] TLR 326; **Pavisa Enterprises vs. Minister for Labour, Youths Development and Sports and Another**, Misc. Civil Cause No. 65 of 2003; **Cheavo Juma Mshana vs. Board of Trustee of Tanzania National Parks and Two Others**, Misc. Civil Cause No. 7 of 2020 and the most recent case of **Halima James Mdee and 18 Others vs The Registered Trustees of Chama cha Demokrasia na Maendeleo (CHADEMA) and 2 Others**, Misc. Cause No. 27 of 2022, where it was held that grant of leave may be refused "if there is some other remedy, judicial or non-judicial.

The principle of 'good faith' that is, the applicant must ensure that the court is not misled by making a 'full and frank' disclosure of all material particulars in dispute as per **Josiah Balthazar Baisi and 138 others vs Attorney General and others** [1998] TLR 331.

Having considered all cases mentioned above, therefore there are six conditions to be considered before granting leave to file judicial review as follows: -

1. There must be prima facie or arguable or case;
2. The applicant has sufficient interest in the matter;
3. The matter must have been brought within time limit of six months.
4. There must be a decision over the matter made by a public body;
4. There must be exhaustion of remedies;
6. That the Application must be made in good faith.

As regard to extent at which this Court can go in scrutinizing applications for leave, it is limited; it is not required to delve into the merits of the would-be application. I am fortified by the holding in the case of **Emma Bayo (supra)** where the Court of Appeal of Tanzania stated as follows: -

*"At the stage of leave, the trial judge should not have gone into the question whether the Minister violated the principles of natural justice for the purposes of quashing his decision under the prerogative orders of the High Court."*

Also, in the case of **Latan'gamwaki Ndwati and 7 Others vs. the Attorney General**, Misc. Civil Application No. 178 of 2022 (unreported) this Court, Hon. Kamuzora, J. at page 17, quoted with



approval what was stated in the Ugandan case of **Kikonda Butema Farms Ltd vs. The Inspector General of Police**, Civil Appeal No. 35 of 2002 as follows: -

*"The trial judge is enjoined to look at the statement of facts, the accompanying affidavit and any annexure that might be attached to the application before granting leave. It is not necessary at that stage to consider whether the Applicant would succeed or not. The Applicant has to present such facts that would satisfy [the] court that [a] prima facie case exists for leave to be granted."*

Lastly but not least, the powers of this Court in issuance of prerogative order of certiorari are as stated in the famous case of **Sanai Murumbe vs Muhere Chacha** [1990] TLR 54 whereby it laid down guiding principles upon which order of certiorari can be issued namely: -

- i. Taking into account matters which it ought not to have taken into account;
- ii. Not taking into account matters which it ought to have taken into account;
- iii. Lack or excess of jurisdiction;
- iv. Conclusion arrived at, is so unreasonable that no reasonable authority could ever come to it;
- v. Rules of natural justice have been violated; and

vi. Illegality of procedure or decision.

Having widely stated the principles of law governing applications for leave to apply for judicial review, let me examine whether the applicant has met the same.

In the matter at hand, as seen from the submissions, the parties don't dispute on the conditions about time limit, both agree that the application for leave has been filed well within the period of six months from the date of delivery of the impugned decision as prescribed by the Law of Limitation Act. However, they lock horns on the other conditions namely, existence of arguable or *prima facie* case which goes with good faith of the Applicants, existence of interest, existence of a decision by a public body and absence of alternative remedy.

I will start with the issue of existence of arguable or *prima facie* case. The Applicant's case is that, there is an arguable case because, the decision by the 1<sup>st</sup> Respondent is, according to her, unreasonable, she has the power to extend the time but has refused to exercise it for reasons known to her. The State Attorney on the other hand argues that the 1<sup>st</sup> Respondent has no such powers because the case by the Applicant was decided by the court. The Applicant replied that the case was not determined on merit, but on technicality as such it cannot be

said to have been conclusively decided by the court since the rights were not determined.

As it can be seen, the argument here is about jurisdiction of the 1<sup>st</sup> Respondent to exercise its powers in terms of section 44(3)(a) of the Law of Limitation Act. I have read the provision and found that it bars the 1<sup>st</sup> Respondent from extending the time in relation to any suit after determination of the suit by any court having jurisdiction to determine the same. It reads as follows: -

*"44(3) No order under this section shall be made- (a) in relation to any suit **after the determination of the suit** by any court having jurisdiction to determine the same;"*  
(emphasis added)

The controversy here is interpretation as to what it is meant by the term "*after determination of the suit.*" The Applicant argues that it is only by disposal of the case on merit that it becomes finally or conclusively determined while the State Attorney argues that it can be on any order, including an order striking out the case.

The State Attorney, yet fronted another argument that the impugned decision was given by a court of law, it cannot be questioned by this Court. The counsel for the Applicant is silent on this contention.

With due respect to the State Attorney, the impugned decision under scrutiny is that of the 1<sup>st</sup> Respondent, not of the court. It is the 1<sup>st</sup> Respondent who refused to grant the requested extension and he is the one with such powers. If his reason that there was *determination of the suit* is upheld, then, no order of certiorari will be issued, but if the vice versa is held, such an order may be issued. I say so because, a decision under the principle of law in **Sanai Murumbe's** case (*supra*) is that matters of jurisdiction, reasonability or unreasonability and illegality of decisions are subject to certiorari. Therefore, basing on the guidance in the case of **Emma Bayo (supra)**, this Court cannot delve into the nitty gritty of the issue in controversy, suffices to say that there is an arguable issue here.

The next question is whether the Applicant has interest. The State Attorney has submitted that the Applicant has failed to demonstrate that she has interest in this matter by failing to give substance material instead it is the 1<sup>st</sup> Respondent who has sufficient interest because if the orders sought are granted, there will be chaos and conflict of laws.

With due respect to the State Attorney, I think he misapprehended the concept of "sufficient interest" as far as leave is concerned. In my firm understanding, sufficient interest in application for leave basically

means *locus standi* in bringing the matter to court. In the **Black's Law Dictionary**, 8<sup>th</sup> Edition, by Bryan A. Garner, at page 960, the term *locus standi* is defined as follows: -

*"locus standi [Latin "place of standing"] The right to bring an action or to be heard in a given forum;"*

From the definition above, a person is said to have sufficient interest if has the right to bring a case in court, he or she may be a directly or indirectly affected person and may do so personally or for behalf of affected person(s).

What did the Applicant say in this case? It is very clear from the affidavit and the statement of facts that the Applicant had filed a case in court claiming for unpaid Tshs. 453,543,004/= from her client, Ambiere Real Estates Ltd, a case which has not been finally determined on merits, she wants to pursue her rights but time is not on her side, hence, she requests for extension from the 1<sup>st</sup> Respondent who has been adamant. She has come to this Court intending to quash the 1<sup>st</sup> Respondent's decision and compel him to extend the time. In my view this amounts to sufficient interest as required by the law.

This brings me to examine, whether there is alternative remedy. The State Attorney submitted that there is alternative remedy because

the court's decision that struck out the Applicant's case is appealable to the Court of Appeal. The Counsel for the Applicant submitted to the contrary that the court acted within the dictates of the law that a legal person cannot file a case in court without a board of directors' resolution. It was the counsel argument that any attempt to appeal on a clear position of the law cannot yield any positive result other than wasting time.

As it can be seen, the counsel for both parties were labouring about the fate of a decision of the court to struck out the case filed by the Applicant. However, the impugned decision in this matter is a decision of the 1<sup>st</sup> Respondent which is subject to discussion whether it is final or not. My reading of section 44 of the Law of Limitation Act, do not reveal any alternative remedy in case the Minister Responsible with Legal Affairs denies granting the order for extension of time. It is my conviction that the impugned decision is final.

There is no dispute in respect of the rest issues of existence of the decision and faith.

By way of orbiter, let me point out one thing about the provisions of section 44 of the Law of Limitation Act. In the case of **Joran Lwehabura Bashange vs. Minister for Constitutional Legal Affairs and Another**, Misc Civil Cause No. 12 of 2023, TanzLII [2024]

TZHC 774 (13 March, 2024) the Full Bench of this Court comprising of Hon. Mlyambina, Kakolaki and Agatho, JJJ after discussing the provision at issue versus the Constitution of the United Republic of Tanzania, 1977, found the same as repugnant to the Constitution and held it unconstitutional liable to be struck from the book of statute. It stated as follows: -

*"From the analysis above and fortified with the authorities cited, the Court declares, and orders as follows: (1) the provisions of Section 44(1) and (2) of the Law of Limitation Act (LLA) are void to the extent that they contravene the Constitution of the United Republic of Tanzania (CURT) due to possible bias, lack of right to be heard, and discriminatory as the opposite party to the application for extension of time is not involved at all, hence lack of equality before the law. These provisions pose absurdity for lacking procedural safeguards against abuse of discretionary powers granted to the 1<sup>st</sup> Respondent. Thus, lacking due process. And above all there is no right of appeal afforded. It is further ordered that the Government through the Office of Attorney General is given 12 months from the date of this judgement to rectify the mischief identified, failure of which the aforesaid provisions of the LLA will be non-starter and are struck out from the statute book."* (emphasis added)

From the ruling above it is clear that although the provision was declared unconstitutional, the Government was given twelve (12) months grace period to rectify it by effecting the necessary amendments by removing the offending provisions, less of which, the provision will cease to have effect. My understanding of the ruling above is that the provision currently is still in force pending the directed amendments, therefore, the Minister Responsible for Legal Affairs can use it to extend time for filing suits out of the prescribed time by the LLA until elapse of 12 months from the date of delivery of the judgement that is on 12/03/2025, when the battery of the provision will automatically cease to have power.

In the upshot, for reasons stated above, I find that this application is meritorious and meets the legal requirements for the grant of leave to apply for judicial review.

I accordingly grant the leave. The Applicant shall file the main application for judicial review within 14 days from the date of this Ruling. I make no order as to costs bearing the nature of the case. Order accordingly.

Dated at Dodoma this 24<sup>th</sup> day of June, 2024





A handwritten signature in blue ink, appearing to read "F. K. Manyanda".

**F. K. MANYANDA, J**

**JUDGE**

Delivered at Dodoma this 24<sup>th</sup> day of June 2024 in the presence of all the parties via virtual court. Right of appeal explained to the parties.



A handwritten signature in blue ink, appearing to read "F. K. Manyanda".

**F. K. MANYANDA**

**JUDGE**