

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

**[MAIN REGISTRY]**

**AT DODOMA**

**MISCELLANEOUS CIVIL CAUSE NO 12602 OF 2024**

**IN THE MATTER OF NON-GOVERNMENTAL ORGANIZATIONS' ACT**

**AND**

**IN THE MATTER OF *KANUNI ZA UCHAGUZI WA BARAZA LA TAIFA LA***

***MASHIRIKA YASIYO YA KISERIKALI* [GN NO. 95 OF 2016]**

**AND**

**IN THE MATTER OF ONGOING ELECTIONS OF THE NATIONAL COUNCIL FOR**

**NON-GOVERNMENTAL ORGANIZATIONS**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF**

**MANDAMUS, CERTIORARI AND PROHIBITION**

**BETWEEN**

**ODERO CHARLES ODERO.....APPLICANT**

**VERSUS**

**NATIONAL COUNCIL FOR NON-GOVERNMENTAL**

**ORGANIZATIONS .....1<sup>ST</sup> RESPONDENT**

**NON-GOVERNMENTAL ORGANIZATIONS**

**COORDINATION BOARD.....2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

## **RULING**

21/06/2024 & 25/6/2024

### **MANYANDA, J.:**

Odero Charles Odero, the Applicant, is moving this Court under Section 2(3) of the Judicature and Application of Laws Act; Section 18 (1) and 19(3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act read together with Rule 5(1), 5(2) and 5(3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 (G.N. No. 324 of 2014).

He is moving it for leave to file a judicial review case against the respondents namely, the National Council for Non-Governmental Organizations (National Council for NGOs), Non-Governmental Organizations Coordination Board and the Attorney General, hereafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, respectively.

The application is brought by way of a Chamber Summons accompanied with an affidavit sworn by the Applicant and a Statement of Facts. It is opposed by the Respondents through their joint counter affidavit and Statement in Reply. The Applicant seeks reliefs listed in the Chamber Summons as follows: -

- 1. That this courts grants leave to the applicant to file a judicial review application for orders of Mandamus; Certiorari and Prohibition to question the legality of the Second Respondent's mandate in supervising; coordinating and conducting the ongoing elections of the First Respondent through its committee entitled Kamati ya Mpito ya Kuratibu Uchaguzi wa Baraza la Taifa la Mashirika Yasiyo ya Kiserikali.*
- 2. Any other orders the court deems fit to grant.*

A brief background of this application as gathered from the facts deponed in the affidavit and Statement of Facts is as follows: There is an ongoing election process of office bearers of the 1<sup>st</sup> Respondent at various levels from District, Regional and National. The said election is being coordinated by the 2<sup>nd</sup> Respondent who has formed a transitional Special Committee called '*Kamati ya Mpito ya Kuratibu Uchaguzi wa Baraza la Taifa la Mashirika Yasiyo ya Kiserikali*' to coordinate and supervise the process, and, has notified the public as such via a notice dated 07/05/2024. The Applicant introduces himself as a founding member of a Non-Governmental Organization (NGO) namely, Civic and Legal Aid Organization (CILAO) allegedly expects to contest for the position of Chairperson in the 1<sup>st</sup> Respondent.

Further, according to the Applicant, the 1<sup>st</sup> Respondent is the only body mandated to coordinate and supervise the election through her

organs established under the National Council Non-Governmental Organization Elections, 2016, known in Kiswahili as *'Kanuni za Uchaguzi wa Baraza la Taifa la Mashirika yasiyo ya Kiserikalij, 2016*. GN No. 95 of 2016. That, while he was waiting for formal notification of commencement of election process through the 1<sup>st</sup> Respondent's legally established electoral organs, he came to know through the said public notice, that the 2<sup>nd</sup> Respondent has been engaged to supervise the election process and appointed the said Committee.

The Applicant questions the illegality of the election process under the 2<sup>nd</sup> respondent's Electoral Committee in lieu of the 1<sup>st</sup> Respondents legally established internal electoral organs. Therefore, he has decided to file this application for leave to file judicial review for orders of certiorari, mandamus and prohibition.

The grounds of his application are contained in paragraph 3 of the Statement of Facts as follows: -

- a) *That the decision of the second respondent, communicated through public notices dated 7/5/2024 to take over the mandate of election process of the first respondent is ultra vires, illegal, unreasonable and unconstitutional;*
- b) *That the commencement of the first respondent election cycle through Kamati ya mpito ya kuratibu uchaguzi wa Baraza la Taifa la*

*Mashirika yasiyo ya kiserikali announced on 16.5.2024 is ultra vires, illegal, unreasonable and unconstitutional;*

- c) *That the first respondent ongoing election at the District and Regional level under the direct control and supervision of the second respondent and its Kamati ya mpito ya kuratibu uchaguzi wa Baraza la Taifa la Mashirika yasiyo ya kiserikali and not first respondent's legally established electoral organs is unlawful;*
- d) *That in terms of section 25(4) of the NGO's Act "No person, body of persons or nongovernmental organization shall after the establishment of the council, perform or claim to perform anything which the council is empowered or required to do under this Act";*
- e) *That in terms of NGO's Act and its regulations and more particularly its Kanuni za uchaguzi wa Baraza la Taifa la mashirika yasiyo ya kiserikali, GN. No.95 of 2016, the mandate to organize, coordinate and supervise of (sic) office bears of the first respondent is exclusively vested in the organs of the first respondent; and*
- f) *That the decision of the second respondent to take over the mandate of electing office bearers of the first respondent is a clear*

*contravention of the existing laws and defeats the first respondent's statutory mandate of self-regulation.*

When this matter was called on to hearing, Mr. John Seka, learned Advocate represented the Applicant and the Respondents enjoyed representation services of Mr. Edwin Joshua Webiro, learned State Attorney.

Mr. Seka for the Applicant submitted relying on the authority in the famous case of **Emma Bayo vs The Minister for Labour and Youths Development and 2 others**, Civil Appeal No. 79 of 2012 in which the Court of Appeal of Tanzania (CAT) stated at page 8 that the first and foremost, purpose for leave in judicial review applications is for screening purposes, so as to allow only deserving applications. In that case the CAT stated that for an application to succeed, there must be demonstration of an arguable case, the application must be made within six months, which is a statutory period and lastly the Applicant must demonstrate existence of sufficient interest to bring the main application.

The counsel went on submitting that the position has been adopted by several decisions of this Court, including but not limited to the cases of **Baltazar Bosco Mahai vs Tanganyika Law Society and Another**,

Misc. Civil Cause No. 27673 of 2023, [2024] TZHC 1348 (29 March 2024) and **PAVISA Enterprises vs. Minister for Labour, Youth Development and Sports and Another**, Misc. Civil Cause No. 65 of 2003, (unreported) but cited in **Baltazar Mahai's case**. In that case, this Court discussed in detail each one of the criteria for granting leave and in that essence adopted two additional criteria which are, there must be a decision over the complained matter and there must be exhaustion of the local remedies.

The counsel for the Applicant submitted in respect of the first criteria on the existence of sufficient interest relying on the averments in the first paragraph of the Applicant's affidavit that he is a leader and founder member of an NGO called CILAO which is registered and regulated by the 2<sup>nd</sup> Respondent. Further to that, the Applicant has expressed interest in contesting for position of a chairperson of the 1<sup>st</sup> Respondent in the ongoing election process. He opined that these two facts are not disputed by the Respondents and therefore demonstrates existence of sufficient interest.

In regard to the second criteria Mr. Seka submitted that there is existence of an arguable case founded under paragraphs 2 to 6 of the

affidavit in which the Applicant complains that the 2<sup>nd</sup> Respondent has taken over the election from the 1<sup>st</sup> Respondent and formed a different committee called '*Kamati ya Mpito ya Kuratibu Uchaguzi wa Baraza la Taifa la Mashirika Yasiyo ya Kiserikali*' to supervise the election contrary to the law. The advocate for the Applicant opined that the arguable case is that, between the two entities, is it the entities mentioned in the law, or the entity formed by the 2<sup>nd</sup> Respondent that has the statutory mandate to organize the 1<sup>st</sup> Respondent's election? That, it is this question that becomes an arguable case, which must be determined on merits in the main application.

Mr. Seka, submitted on the 3<sup>rd</sup> criteria about existence of a decision over the matter arguing that in the case at hand, the Applicant, through paragraphs 5 and 6 of the affidavit the Applicant has demonstrated existence of a decision per public notice made on or about 7<sup>th</sup> May 2024 evidenced in Annexure "B" to the affidavit. According to the counsel, it was through that notice that the 2<sup>nd</sup> Respondent communicated to the public the decision to form a committee known as '*Kamati ya Mpito ya Kuratibu Uchaguzi wa Baraza la Taifa la Mashirika Yasiyo ya Kiserikali*'.



About the fourth criteria, the counsel submitted that it centers on exhaustion of local remedies and that through paragraph 10 of the affidavit the Applicant pleaded absence of any local remedy that he can go to save for this Court by way of judicial review.

In regard to the last criteria, in respect of time limitation, he submitted that the decision was made on 7<sup>th</sup> May 2024, the Applicant instituted this application in the end of May 2024, well within the six months limitation period.

Then, the counsel, invited this court to be persuaded with the authorities in the cases of **Ms. Y.P. Architect Tanzania Limited vs. TANESCO and Others**, Misc. Civil Cause No. 122023 of 2023 in TanzLII [2024] TZHC 1349 (25 March 2024) and **Protas Joseph Mushi vs. the Chief Secretary and Others**, Misc. Civil Cause No. 27367 of 2023 in TanzLII [2024] TZHC 1342 (2 April 2024).

In reply Mr. Webiro for the Respondents adopt the counter affidavit as well the statement in reply in opposition to the application. In his submissions, the State Attorney, basically agreed with the position of the law on criteria for granting leave for the judicial review as it is in all the cited cases.

He submitted further that in order for the same to be granted, the application must meet all the criteria cumulatively. He opined that that the Applicant has not managed to establish sufficient interest. He was of the view that it is not a mere interest but it must be a "sufficient interest". He referred to a term "sufficient" as defined in the **Black's Law Dictionary**, 8<sup>th</sup> Edition, Bryan A. Garner at page 1474, as *"adequate of such quality, number, force or value as is necessary for a given purpose"*. He argued that the Applicant has failed to establish "sufficient interest" as a condition for leave to be granted.

According to the State Attorney, the rationale is that a judicial review as a remedy which is invoked sparingly and where there is no alternative remedy, it is necessary to allow only people with "sufficient interest", meaning, those who have been affected by the complained act with genuine claims. The condition intends to exclude strangers or busy bodies who might abuse the court process by filing frivolous or vexatious matters for their personal gain which might at the end of the day wasted the precious time of the court.

Mr. Webiro challenged the evidence brought by the Applicant arguing that in paragraph 1 of the affidavit as well as paragraph 1 of the Statement

of Facts, the Applicant has merely stated that he is a member of an NGO known as CILAO and that he is intending to contest in the upcoming election of the 1<sup>st</sup> Respondent in the position of a chairperson. He was of the view that the issue of membership of an organization cannot be proved by a mere statement, it requires documentation because under section 25(1) and (2) of the NGOs' Act, the 1<sup>st</sup> Respondent is established as an umbrella organization for NGOs and act as a collective forum of NGOs for the purposes of coordination and networking of NGOs. The State Attorney opined that by looking at the purposes of which the 1<sup>st</sup> Respondent is established, it is only NGOs and members of NGOs who have sufficient interest in any matter involving the 1<sup>st</sup> Respondent. He was of the view that in order for one to establish membership of an NGO, he must first prove the existence of that NGO. Pursuant to section 18 of the NGOs Act, what proves existence of an NGO in Tanzania is a certificate of Registration, which is conclusive evidence of the authority to operate as specified in the constitution or the certificate of registration.

It was his further submissions that documents proving existence of an NGO are certificate of registration, constitution of the alleged NGO as well as list of founding members. As regard to documents required for

registration of an NGO, the State Attorney submitted that under Section 12(2) of the NGOs' Act, are copy of the constitution of the NGO, minutes containing full names and signatures of the founding members and personal particulars of office bearers.

Further, he insisted that under section 30(1) of the NGOs' Act, the governing documents of the NGOs are the constitution and other documents submitted by founder members to the Registrar at the time of making application for registration. Therefore, in his opinion, for one to prove his membership to any NGO, he must first produce a certificate of registration of that NGO, constitution of the said NGO as well as a list of founder members.

He observed that since the Applicant has alleged to be a founding a member of the alleged NGO, if the registration certificate, constitution and list of founder members had been produced, then, this Court would have been in a better position to ascertain whether the Applicant is a member of the alleged NGO or otherwise. Mr. Webiro argued that all these documents were not attached in the affidavit in support of the application, therefore the condition of "sufficient interest" has not been established.

Moreover, the State Attorney referred this Court to paragraph 1.3 of their joint statement in reply as well as paragraph 3 of the counter affidavit as pleadings by the Respondents disputing averment by the Applicant about "sufficient interest argued that the condition of sufficient interest has not been well established by the Applicant because proof that an NGO exists or operates after registration is by production of a certificate of registration and its governing documents to be its constitution and list of founding members as per section 30(1) of the NGOs Act cited above. That, absence of all these means the alleged NGO is not in existence and the applicant is not a member of any registered NGO as such he cannot have sufficient interest in any matter involving the 1<sup>st</sup> Respondent.

With regard to the second issue that the Applicant is intending to participate in the upcoming election, the State Attorney argued that since the Applicant has not established existence of the NGO and has not established that he is a founding member of any registered NGO, then, he cannot participate in the election, taking into account that it is only members who are allowed to participate in an election of the NGO.

He cited an Indian case of **Nur Begum vs. Union of India and Others, WP (C) 1900/2019**, accessible on the *website*

*<https://indiancanoon.org/doc>* where the court was dealing with an issue of citizenship, it concluded that oral testimony alone is no proof of citizenship, and made it clear that the issue of citizenship requires documentary proof.

He was of the view that the issue of citizenship is closely related to the issue of membership of an organization. He invited this Court to be inspired by the decision and find that the issue of membership to an organization cannot be proved by a mere statement but through documentary evidence proof.

Moreover, the State Attorney compared membership of an NGO to that of a political party that the same is provable by production of membership cards or by production of a list of founding members.

He concluded that since the first criterium of "sufficient interest" has not been proved by the Applicant, then, this application lacks merit because all criteria must be proved cumulatively and prayed the application be dismissed with costs for want of merit.

Mr. Seka rejoined relying on the provisions of section 61 of the Evidence Act, [Cap. 6 R. E. 2022] that all facts except the contents of a document may be proved by way of oral evidence and that under section

62(1) of the same law, evidence must be direct and come from the maker. Therefore, he was of the view that it is not an offence at law for the Applicant to prove through an affidavit which is a substitute of oral evidence that he is a member of an NGO and that he aspires to contest for the position of chairperson of the 1<sup>st</sup> Respondent as per paragraphs 1 and 2 of his affidavit.

That, if there is any doubt, about the competence and genuineness of the averment in the affidavit, the Respondents ought to have stated so in their counter affidavit. He opined that the Respondents in paragraph 3 of their counter affidavit just stated that they do not know this fact, which to him, means the fact were essentially not disputed.

Then, he added that submissions by the learned State Attorney was and by large submissions from the bar which do not carry legal weight else if they are taken to be correct at law they supplement the oral evidence of the Applicant

As regard to the documents which concern registration of the NGO about registration of the NGO, the counsel was of the view that they are not a requirement of demonstration of sufficient interest of an individual. He relied on the case of **Baltazar Mahai's case (supra)**, where the

Applicant was not required production of documents of registration of the TLS. He reiterated his prayer that the reliefs asked in the Chamber Summons be granted.

Those were the parties' counsel submissions; I commend for their well-researched submissions. Having dispassionately considered the equally urging views of the learned minds, I find that the main issue is whether this application has merits to allow this Court grant the prayers in the Chamber Summons on the grounds stated in the statement of facts by the Applicant.

This been an application for leave, the guidance is as laid down in the famous case decided by the Court of Appeal of Tanzania, the case of **Emma Bayo vs. Minister for Labour and Youth Development and Another vs. Attorney General and Another, (supra)** that there are three conditions to be considered before grating leave to file judicial review as follows: 1. Applicant have sufficient interest in the matter; 2. There must be arguable or prima facie case; 3. The matter must have been brought within time limit of six months.

Then as rightly argued by the counsel for applicant, that more conditions were spelt out in various cases including **Baltazar Mahai's**



**case (supra)** that there must be a decision over the matter made by a public body; 4. There must be exhaustion of the remedies; That in the case of **Josiah Balthazar Baisi and 138 others vs Attorney General and others** [1998] TLR 331, the application must be made in good faith by the applicant making a 'full and frank' disclosure of all material particulars in dispute, which basically, in my view, all boil down to the condition of establishing an arguable or prima facie case.

In this matter, the principle of law that criteria for grant of leave must be cumulatively established is not disputed by the counsel for both parties that. In fact, this principle was emphasized in the case of **Pavisa Enterprises vs. The Minister for Labour Youth Developments & Sports and Attorney General**, Misc. Civil Cause No. 65 of 2003 that these criteria have to be established cumulatively.

Moreover, from the pleadings and their submissions, the counsel for both sides takes no issues in respect of all the criteria save only one, on which they lock horns, proof of "sufficient interest". It was the submissions by Mr. Seka that the Applicant's averments in paragraph 1 of the affidavit proved sufficient interest in bringing this matter because he has shown that he is a leader and founder member of an NGO called CILAO

which is registered and regulated by the 2<sup>nd</sup> Respondent. Further to that, he has expressed interest in contesting for position of a chairperson of the 1<sup>st</sup> Respondent in the ongoing election process.

On the other hand, Mr. Webiro disputed this contention arguing that the Applicant has not managed to establish sufficient interest insisting that in law it is not mere proving interest but it must be a "sufficient interest".

In this issue, this Court has asked a question whether the Applicant has established sufficient interest.

I agree with the definition of the term "sufficient" as submitted by Mr. Webiro after referring to the dictionary called **Black's Law Dictionary**, 8<sup>th</sup> Edition, Bryan A. Garner, in which at page 1474, is defined as *"adequate of such quality, number, force or value as is necessary for a given purpose"*.

This word, in my opinion, puts emphasis over mere assertion of one having interest in a given matter, but he or she must put material evidence proving sufficiency of his or her interest in the concerned matter. The rationale is as suggested by Webiro, which I agree with that a judicial review as a remedy which is invoked sparingly and where there is no

alternative remedy, it is necessary to allow only people with "sufficient interest", meaning, those who have been affected by the complained act with genuine claims.

Is the interest stated by the Applicant sufficient enough to support this application? This is the question I am going to answer. In paragraph 1 of the affidavit supporting the application, the Applicant stated as follows: -

*"1. That, **I am a founding member** of a Non-Governmental Organization entitled as Civic and Legal Aid Organization [CILAO] **and an intending aspirant for the position of Chairperson** in the upcoming elections of the First Respondent."*

This averment was replied by the Respondents in paragraph 3 of the counter affidavit as follows: -

*"3. That the contents of paragraphs 1 and 2 of the affidavit in support of the application **are neither noted nor admitted** as they are facts solely within the knowledge of the Applicant and the Respondents are unaware of the same." (emphasis added)*

I have also read the statement of facts by the Applicant and found in paragraph 1 that he stated as follows: -

*"1. The applicant **is a founding member** of a Non-Governmental Organization entitled as Civic and Legal Aid Organization [CILAO] and an **intended aspirant for the position of Chairperson** in First Respondent's upcoming elections."*

On the other hand, the Respondents replied the facts in paragraph 1 of the Statement of Facts as follows: -

*"1.3 That, the contents of paragraphs 1 of the Applicant's Statement **are disputed.**"*

As it can be seen, the words "*are neither noted nor admitted*" by the Respondents in the counter affidavit, as emphasized, carry with them two effects. One, is that the Respondents do not "know" the facts alleged by the Applicant that he is a founding member of a Non-Governmental Organization entitled as Civic and Legal Aid Organization [CILAO] and an intended aspirant for the position of Chairperson. Second, the Respondents do not "admit" those facts. It follows therefore that from their counter affidavit, the Respondents don't only deny to know those facts but also do not admit them, which in totality means they are disputing the allegations by the Applicant averred in paragraph 1 of the affidavit.

Equally in the Statement in Reply, the Respondents conspicuously stated as appearing in the quoted paragraph 1.3 that they are disputing all facts contained in paragraph 1 of the Statement of Facts.

The Counsel for the Applicant says, the fact of sufficient interest is not disputed by the Respondents, the Respondents say that fact is disputed. Then, it is clear from the above analysis that, with due respect to Mr. Seka, the Respondents disputed the contention that the Applicant has sufficient interest because they disputed the allegations that he is a founding member of a Non-Governmental Organization entitled as Civic and Legal Aid Organization [CILAO] and an intended aspirant for the position of Chairperson.

Mr. Webiro challenged the evidence brought by the Applicant arguing that merely stating that he is a member of an NGO known as CILAO and that he is intending to contest in the upcoming election of the 1<sup>st</sup> Respondent in the position of a chairperson is not enough to prove "sufficiency" unless relevant documents establishing not only existence of that NGO but also that he is a member thereof are produced. He named those documents as being the certificate of registration, constitution of the NGO and a list of founding members.

He backed up his argument with provisions of section 25(1) and (2) of the NGOs' Act. I have visited the same read as follows: -

*"25(1) There shall be established **an umbrella organization** for Non-Governmental Organizations to be known as the **National Council for Non-Governmental Organizations**.*

*(2) The Council shall be **a collective forum of Non-Governmental Organizations for the Purposes of co-ordination and networking of all Non-Governmental Organizations operating in Mainland Tanzania.**"*  
*Emphasis added"*

As it can be seen from the emphasis, the 1<sup>st</sup> Respondent is an umbrella organization of NGOs, it is an apex organization of the NGOs for purposes of coordinating and operating NGOs in Tanzania. It follows therefore, as rightly submitted by the State Attorney, it is only NGOs and or members through their NGOs that may have "sufficient interest" in matters involving the 1<sup>st</sup> Respondent.

A question that follows is how can a person prove to have "sufficient interest" in the affairs of the 1<sup>st</sup> Respondent. The State Attorney submitted that it is through production of documents evidencing existence of the NGO itself and membership thereto. The Applicant's counsel submitted that it

may be through oral evidence or as it is in this matter affidavit being a substitute thereof suffices.

In this issue, there are two controverting versions of arguments by the counsel, one is for Respondents that proof of membership needs documentary proof of existence of the NGO itself, then followed with membership; second for the Applicant that proof of membership is possible without documentary evidence and without proof of existence of the NGO itself.

Under section 18 of the NGOs Act, which this Court was referred to, mandatorily provides that the only conclusive evidence that there is an NGO existing and operating is through production of a certificate of registration. The provision reads as follows: -

***"18. A certificate of registration shall be a conclusive evidence of the authority to operate as specified in the constitution or in the certificate Of registration."*** (emphasis added)

Moreover, as submitted by the State Attorney, under section 30 it is prohibited for any NGO to operate without any governing documents which are listed under section 30(1) as being the constitution and list of its

founding members. Now, under these circumstances and the legal provisions, can a member of a given NGO be identified operating as such without proof of existence of the NGO as active one? The answer, with due respect to Mr. Seka is in negative. I say so because under our laws, proof of existence of any legal body is by production of its registration certificate or its constitution or memorandum and articles of association as the case may be. NGO being one of such bodies, are not spared with. So is the proof of membership of such other legal bodies, that is, proof of existence of the concerned bodies or membership through documentation. If the law was louse to allow membership or existence of legal persons by mere assertions, then it would be not less that allowing, with no check, unqualified legal bodies operate and unqualified persons act as members of such bodies as such.

Therefore, for reasons stated above, and with due respect to Mr. Seka, for the Applicant, I agree with the State Attorney, Mr. Webiro, that it is the correct requirement in law for one to prove his membership to any NGO, he must first at least prove existence of that NGO by producing a certificate of registration which according to section 18 of the NGOs Act, is conclusive evidence of that NGO about its existence and operation.



Moreover, since the Applicant also alleged to be a founding a member of CILAO, he was expected to produce the constitution and or list of founder members for this Court to be in a better position to ascertain whether the Applicant is a real active member of the alleged NGO and the same NGO is active operating or otherwise. This could have casted assurance that the Applicant has "sufficient interest" in the 1<sup>st</sup> Respondent's affairs, been an apex of all NGOs in the country.

I agree with the position of law in the Indian case of **Nur Begum vs. Union of India and Others (supra)** that memberships of some entities are provable only by production of documents, which is verifiable and more reliable evidence such as citizenship, membership to political parties and sports clubs like Young African Sports Club and Simba Sports Club, to mention a few.

In this case, the Applicant ought not only produce documentary evidence to witness that the NGO he relied upon, CILAO exists and is in operation by producing its certificate of registration under section 18 of the NGOs Act, but also that he is a member thereof.

Mr. Seka referred this Court to the provisions of section 61 of the Evidence Act, that all facts except the contents of a document may be

proved by way of oral evidence. I agree with that position of the law, however that is a general law, of which exceptions include the circumstances of this case as elaborated above.

Equally, Mr. Seka referred this Court to the case of **Baltazar Mahai's case (supra)**, where the Applicant was not required to produce documents of registration of the TLS. I agree, in that though the Applicant averred that he was active member of the TLS, did not produce documents to evidence the same. However non-production of documents to evidence status of membership in that case was not an issue before this Court. Moreover, the court is allowed to take judicial notice of members of the TLS when they enter appearance in courts, unless the court wants to verify and satisfy itself.

In my analysis and reasons given above, I have found that the Applicant has failed to meet one of the vital conditions for grant of leave for applying for judicial review, that is sufficient interest. Since, it is trite law, as stated in the case of **Pavisa Enterprises vs. Minister for Labour, Youths Development and Sports and Another**, (supra), all the conditions must be cumulatively proved, then, failure to prove one condition, as in the instant case, makes this application fail.

Consequently, I do hereby dismiss this application for want of merits. I make no order as to costs bearing the nature of the case. Order accordingly.

Dated at Dodoma this 25<sup>th</sup> day of June, 2024



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

**F. K. MANYANDA,**

**JUDGE**

Delivered at Dodoma this 25<sup>th</sup> day of June 2024 by virtual court in the presence of Mr. John Seka, the counsel for the Applicant, Odero Charles Odero, who also present and Mr. Edwin Joshua Webiro State Attorney for the Respondents. Right of appeal explained to the parties.



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

**F. K. MANYANDA, J.**

**JUDGE**