

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

**(MAIN REGISTRY)  
AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL CAUSE NO. 000002285 OF 2024**

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

**AND**

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

**AND**

**IN THE MATTER OF JUDICIAL REVIEW (FATAL ACCIDENTS AND  
MISCELLANEOUS PROVISIONS) (JUDICIAL REVIEW PROCEDURES AND  
FEES) RULES, 2014 GN NO. 324 OF 2014**

**AND**

**IN THE MATTER OF THE PUBLIC SERVICES ACT, [CAP 298 R.E 2019]**

**AND**

**IN THE MATTER OF AN INTENDED APPLICATION BY MONKYARO  
NDEONASIA MINJA FOR ORDERS OF *CERTIORARI* AND *MANDAMUS*  
AGAINST THE DECISION OF THE CHIEF SECRETARY (PRESIDENT'S  
OFFICE), THE PUBLIC SERVICE COMMISSION AND TANZANIA INSTITUTE  
OF ACCOUNTANCY (TIA)**

**BETWEEN**

**MONKYARO NDEONANSIA MINJA.....APPLICANT**

**VERSUS**

THE CHIEF SECRETARY, PRESIDENT'S OFFICE.....	1 <sup>ST</sup>
RESPONDENT	
PUBLIC SERVICE COMMISSION.....	2 <sup>ND</sup>
RESPONDENT	
TANZANIA INSTITUTE OF ACCOUNTANCY.....	3 <sup>RD</sup>
RESPONDENT	
THE ATTORNEY GENERAL.....	4 <sup>TH</sup>
RESPONDENT	

## **RULING**

07<sup>th</sup> & 14<sup>th</sup> March, 2024

**KAGOMBA, J.**

The applicant herein craves for leave of this court so as to ultimately apply for an order of *certiorari* to quash the decision of his disciplinary authority and the appellate organs thereto of dismissing him from his employment with the 3<sup>rd</sup> Respondent. The applicant further intends to seek an order of *mandamus* to compel the said disciplinary authorities to reinstate him in his employment. Apart from leave of the court, he also prays for any other orders as this court may deem just to grant, as well as costs of this application.

The application is preferred by way of a chamber summons made under Section 17(2) and 18(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [Cap 310 R.E 2019]; Rule 4, 5(1) and (2)(a, b, c & d) and Rule 17(1&2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 GN No. 324 of 2014, and section 2(1) & (3) of the Judicature and Application of Laws Act, [Cap 358 R.E 2019].

The application is accompanied by an affidavit sworn by the applicant together with his statement. On their side, the respondents herein saw no need to file a counter affidavit or reply statement.

When the application came up for mention with a view to setting a hearing date, Mr. Francis Wisdom, learned State Attorney, represented all the respondents. He made a very wise and professional address to the court when he intimated that having perused the application, the respondents' side formed an opinion that the applicant had complied with all the conditions for granting of leave as enunciated by the Court of Appeal in the case **Emma Bayo vs Minister for Labour and Youths Development & 2 Others**, Civil Appeal No. 79 of 2012, CAT, Arusha. Without any further ado, he supported the application.

Prior to Mr. Wisdom's address to the Court, Mr. Aidan Lusajo Witson Mwakaseje, learned Advocate for the applicant had adopted both the applicant's statement and affidavit to support the application. He also laid bare how his client had met three conditions required to be met if leave is to be granted. He mentioned such conditions as; **Firstly**, having interest in the application. **Secondly**, observance of time limitation for filing the application, and **thirdly**, establishing that there is an arguable case.



Elaborating on the above conditions, Mr. Mwakaseje submitted that his client has interest in the case since it is himself who was dismissed from employment and he is aggrieved by that decision. He also submitted that after receiving the appellate decision from the President's Office, the applicant has filed his application within the period of six months from the date thereof and that he has an arguable case as shown in his affidavit that the applicant was not granted right to be heard.

Given the scenario above, the duty of this court is to determine whether the applicant has met the legal threshold for his application to be granted. The case of **Emma Bayo v. Minister for Labour and Youths Development & 2 Others**, (supra), cited to this court by Mr. Wisdom provides a simple barometer for gauging whether an application for leave has passed the test of acceptance. In this regard, the Court of Appeal had this to guide:

*"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.** These are the preliminary matters which the High Court sitting to determine the appellant's application for leave should have considered while exercising its judicial discretion to either grant or not to grant leave to the applicant/appellant herein."*

*[Emphasis added]*

With the above three conditions in mind, I have read the applicant's chamber summons, his statement as well as verifying affidavit to see whether the application passes the legal test above. It is my finding that the applicant holds sufficient interest in this matter which is about his dismissal from employment with the third respondent on 25<sup>th</sup> June, 2019.

As to whether the applicant has timely filed his application with the six (6) months period prescribed under rule 6 of GN No. 324 of 2014, the answer is in the affirmative. It is undisputed fact that the applicant climbed all the appeal ladder from the Public Service Commission to the President of the United Republic of Tanzania after whose decision the applicant filed this application in December, 2023. It is also undisputed that the decision of the President rendered on 6<sup>th</sup> August, 2023 was

communicated to the applicant on 21<sup>st</sup> August, 2023. The applicant's counsel submitted that the application has been filed precisely within five (5) months plus seventeen (17) days. I have no reason to doubt his numbers. It looks so obvious that from 21<sup>st</sup> August, 2023 when the last appellate decision was served upon the applicant to 7<sup>th</sup> February, 2024, when the application was filed in this court, the same has been filed within the prescribed time of six (6) months.

As to whether the applicant has raised an arguable case, I would answer in the affirmative. The applicant claims, *inter alia*, that a committee formulated by the third respondent to investigate into the allegation of tempering with students' examination results, recommended the formulation of an enquiry committee to find out whether the applicant was involved or not. The applicant claims that the enquiry committee was not formulated hence the dismissal decision that ensued was unfair.

In his application, the applicant has also cited inadequate notice for disciplinary hearing, non-provision of reasons to justify the dismissal decision, and generally non-observance of disciplinary procedures which led him to be condemned without his charges been proved. These are, in a nutshell, some of the shortfalls which, allegedly, engulfed the




impugned decisions. It is not incumbent upon this court to determine whether or not such allegations are true, or how far such allegations are true. Suffice to say that the applicant has met the criteria of having an arguable case.

Based on the above reasons, I am satisfied that the application has met the legal threshold for granting of leave to file for judicial review. Accordingly, the application is granted and *ipso facto*, leave is granted to the applicant to apply for orders of *certiorari* and *mandamus* as prayed in the chamber summons.

Considering that the application has gone uncontested, I make no order as to costs.

**Dated at Dar es Salaam** this 14<sup>th</sup> day of March, 2024.



  
ABDI S. KAGOMBA  
**JUDGE**