

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

MISCELLANEOUS CIVIL APPLICATION No. 02 of 2022

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

AND

**IN THE MATTER FOR APPLICATION FOR ORDERS OF CERTIORARY AND
PROHIBITION**

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

**AND IN THE MATTER OF APPLICATION TO CHALLENGE THE DECISION OF
ARCHBISHOP PETER KONKI**

BETWEEN

BISHOP AMOS BENJAMID MADAY.....APPLICANT

VERSUS

BISHOP PETER KONKI..... 1ST RESPONDENT

(The Arch Bishop of Kanisa a Elim Pentekoste Tanzania – KEPT)

THE REGISTERED TRUSTEES of..... 2ND RESPONDENT

Kanisa a Elim Pentekoste Tanzania – KEPT)

Date: 19/12/2022

BARTHY, J.

RULING

The applicant preferred the instant application under **section 2 (3) of the Judicature and Application of Laws Act, [Cap 358 R.E 2002]; Section 17 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 R.E 2019] as amended and section 68(e) and section 95 of the Civil Procedure [Code Cap 33 R.E. 2002]**. The gist of the application is as hereunder;

- 1. That this Honourable Court be pleased to grant leave to the Applicant to file an application for certiorari to quash the decision of the **Archbishop PETER KONKI** of 23rd, September 2022 which terminated **AMOS BENJAMID MADAY** from service to the church as a Bishop of Shinyanga Diocesan, and declare the act of termination as arbitrary, malicious and abuse of power by the Archbishop.*
- 2. That this Honourable Court be pleased to grant leave to the applicant to file an application for prohibition to prohibit the 1st respondent from continuing his actions of breach of the **KANISA LA ELIM PENTEKOSTE TANZANIA (KEPT)** constitution and application of Ultra-vires in his acts in the running and administration of **KEPT CHURCH**.*
- 3. Any other order/orders that this Honourable Court may deem fit and equitable to grant.*
- 4. During the hearing of this application, the applicants were represented by Mr. Paschal Peter, learned counsel Costs to follow event.*

The brief background of this matter is that, the applicant was the Diocesan Bishop of Shinyanga serving under Kanisa la Elim Pentekoste Tanzania (KEPT). Sometime in April 2022 while attending the Central Council's Meeting in Babati, the first respondent announced the amendment of Elim Pentekoste Church Constitution of 2014 claiming he was allowed to amend it with the Registrar of Societies.

The applicant on August 2022 decided to write a letter to the Registrar of Society to inform him on the breach of the constitution and required his interference to stop the first respondent's action against the affairs of the church.

The first respondent was not amused with the action of the applicant. He convened the Central Councils' Meeting on 23rd September 2022 and among of the agenda of the meeting was the report made by the applicant to the Registrar of the Societies. That followed with the applicant being terminated from his position without being afforded the right to be heard.

During the hearing of the application, the applicant was represented by Mr. Losyeku N. Kisulu, learned counsel. The application was heard ex-parte as provided under rule 5(2) of Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 (the Rules).

On the submission made by Mr. Kisulu the counsel for the applicant was in line with the statement of facts and affidavit of the applicant in support of the application; which were made part of his submission.

It was Mr. Kisulu's submission that, the applicant is seeking leave to file for application for judicial review, as the law requires he must first obtain leave of this court.

The applicant believed he was adversely affected by action and decisions of the respondents. Hence, the application for leave to file the application for judicial review before this court.

It was further submitted that applicant was the Diocesan Bishop of Shinyanga serving under Kanisa la Elim Pentekoste Tanzania (KEPT), where the Arch-Bishop is Peter Konki.

Then on 23rd September 2022, the Central Counsel's Meeting was convened at Babati where the applicant was the member. However, in that meeting he was told to go out of the meeting and the deliberation was made to terminate his title and position as the Bishop without being afforded the right to be heard, which was contrary to the constitution of the United Republic of Tanzania under Article 13(6)(a).

It was further submitted that the applicant was told by the first respondent that its because he was taking out the information of the church.

In the furtherance of the argument, Mr. Kisulu stated the removal of the applicant was in violation of rule 4(1)(c) of Elim Pentekoste Church Constitution of 2014. As it was the General Meeting which had those powers and not the Central Counsels' Meeting.

It was also his submission that, should the court grant the leave to file the application for judicial review the applicant will be able to challenge the excessive power that that were exercised by the first respondent which was against the constitution of the church (KEPT) and the United Republic of Tanzania.

Mr. Kasulu to conclude prayed to this to grant the application so that the applicant can exercise the powers the quash illegal decision and prohibit

the first respondent from continuing breach of the Elim Pentekoste Church Constitution of 2014.

Having heard the submission of Mr. Kalusu the counsel for the applicant, the only issue for determination by this court is;

Whether there are sufficient reasons to grant leave for application

With respect to the application before this court, the spirit of judicial review is to ensure that statutory powers are not; usurped, exceeded or abused and that procedural and substantive duties are complied with any organ or person.

Generally speaking, the application for judicial review in Tanzania is not an automatic right. As one should labour to seek first for leave to file for judicial review. The applicant therefore has to endeavor to fulfil all conditions before the court grant the same.

Having in mind the arguments brought forth before this court, however guided with the principles set in the case of **Emma Bayo vs The Minister of Labour and Youth Development and Others**, Civil Appeal No. 77 of 2012 where the Court of Appeal of Tanzania at Arusha, had stated that, three conditions has to be met for the court to grant leave to file application for judicial review which are;

- i. whether the applicant has made out any arguable case;*
- ii. whether the application is within the six months limitation period allowed to seek a judicial review of the decision of a tribunal subordinate to the High court;*
- iii. that the applicant has to show that he/she has sufficient interest to be allowed to bring the main application.*

To begin with the first condition where the court is required to ascertain as to whether the applicant has made any arguable case. On this ground, Mr. Kisulu had submitted that there was illegal decision exercised in excess of powers by the respondents on the Central Counsels' Meeting meeting of Kanisa la Elim Pentekoste Tanzania (KEPT) convened at Babati on 23rd September 2022.

It was argued that, in the said meeting the applicant who was the Diocesan Bishop of KEPT Shinyanga was told to go out during the meeting and the deliberation was made to strip off his title and position without affording him the right to be heard which is contrary to the constitution of the United Republic of Tanzania under Article 13(6)(a).

It was further stated that, the first respondent was the one who moved to take out the applicant. But then, the said Central Counsels' Meeting did not have the right to remove the applicant from his position. He contended that; it was the general assembly of the church which has the mandate to vote him out in accordance to rule 4(1)(c) of Elim Pentekoste Church Constitution of 2014.

Considering the submitted arguments, having also gone through the affidavit in support of application and the exhibits attached as annexure; I am mindful that, when the court is satisfied that the body has acted illegally or when there is procedure impropriety, the same can be a ground to grant leave to file the application for judicial review.

In the present matter there is allegation that the Central Counsels' Meeting has acted in the absence of powers with improper motive and in breach of the principles of natural justice. These facts clear prove that the first pre-condition has been met.

The second condition requires the court to ascertain as to whether the application is within the six months limitation period allowed to seek a judicial review. On this condition, Mr. Kasulu has stated that the Central Counsels' Meeting has terminated the applicant on 23rd September, 2022. Therefore, the application has been made within six months from the time the termination was made against the applicant.

On the last condition the court is required to ascertain if the applicant has shown sufficient interest to be allowed to bring the main application. Mr. Kasulu on his submission had argued that the applicant was the Diocesan Bishop under KEPT. The decision made to terminate him was in violation of laws and procedures.

On this condition, the court has to be satisfied that the applicant has the interest in the matter and he is not just the busy body. It is the step where the court before granting the leave has to ascertain that the applicant has interest in the application personally and he will not abuse the court process, but he will be the one to proceed with the substantive hearing during the judicial review. See the case of **Pavisa Enterprises v. The Minister for Labour Youth Development and sports & Another, Misc. Civil Cause No. 65 of 2003, High Court of Dar es Salaam (unreported)** whereby this court observed amongst other things, that the applicant is required to show decision and sufficient interest in that decision to which the application relates and to what extent he has been affected with such a decision to be impugned.

This was also stated in the case of **Re Harji Transport Services (1961) EA. 88**, where the court had this to say;

The ground must at its face value, be based on the facts as averred by the applicant in the verifying affidavit and must prove


not only that the applicant has sufficient interest in the matter, but also that he has an arguable case for grant of leave.

In the present application, the affidavit in support and the submission made by Mr. Kisulu claims that the decision has been to affect the applicant in person, therefore it is clear that the applicant has sufficient interest to bring the main application.

Having considered the submission in support of the application and made a due regard that pre-conditions set which need to be considered before granting leave to file application for judicial review have all been met; the court therefore is satisfied that the application has the merit. The application for leave to file application for judicial review is granted. The applicant has to file the application for judicial review within 14 days from the date of this decision as provided for under rule 8 (1) (b) of the Rules. No order as to costs.

It is so ordered.

DATED at Babati this 19th December, 2022.


G.N. BARTHY
JUDGE
19/12/2022