

IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM

MISCELLANEOUS CIVIL CAUSE NO. 39 OF 1986

IN THE MATTER OF AN APPLICATION BY ASGARALI  
RAMZANALI MANEKIA FOR ORDERS OF CERTIORARI  
AND MANDAMUS

AND

IN THE MATTER OF THE MINISTER FOR HOME AFFAIRS

RULING

MINZAVAS, JK.- In this application the applicant sought for leave to be granted to him to seek an order of certiorari for the removal of the decision of the Minister (which ordered that the applicant be deported) to this Court for the purpose of quashing it and for an order of mandamus that the applicant be restored/issued with a valid residential permit class A.

The applicant also prayed that the deportation order issued against him on 14/5/86 be stayed pending determination of the application.

On 20/5/86 the Court declined to hear the application ex-parte and ordered that the A.G. Chambers and the Director of Immigration be served with notice of hearing and with the necessary papers. The matter was adjourned to 22/5/86 for hearing.

On 22/5/86 when the matter came up for hearing Mrs. Nguzoro learned counsel for the respondent/Rep. asked for time to study the papers which she said had only been served to her the day before. The application which was not apposed was granted and the deportation order was stayed pending determination of the application. The court also ordered that the applicant be released from jail. Hearing of the application was fixed for 29/5/86.

On 29/5/86 Mr. Marando gave a detailed submission regarding applicant's presence in the country - How he visited the country for the first time in 1967 as a visitor and again in 1968 when he obtained resident permit. Later, it was argued, he decided to work on his own and that he applied for a resident permit class A which, according to the learned counsel for the applicant, was granted - annexure H to the affidavit. The said permit is dated 21/1/86.

On 10/5/86 he was arrested allegedly for being in the country unlawfully and remanded in custody. It was alleged by the immigration that his resident permit was a forgery. The learned counsel argued that the question whether or not a resident permit is a forged document is a matter to be decided by the Court and not by the Minister for Home Affairs.

It was argued that the powers of the Minister to deport a person under section 24(1) (b) of the Immigration Act, 1972 could only be exercised where it is found that such person has no valid documents authorizing his stay in the country.

It was further argued that even if for the sake of argument the court found as a matter of fact that applicant's resident permit was a forgery, the applicant was a victim of the Immigration Department and that the Court should order that he be issued with a valid resident permit. After Mr. Marando's submission Mrs. Ngororo learned counsel for the respondent/Republic prayed for time to prepare her reply. There was no objection to the application and the application was granted and the matter was adjourned to 5/6/86 for hearing.

On 5/6/86 when hearing resumed Mr. Marando was nowhere to be seen. The Court exercised its indulgence and adjourned the hearing to 12/6/86. When the matter came up for hearing on 12/6/86 Mr. Marando was again absent. Mrs. Ngororo told the Court that she had communicated to him the hearing date. Mrs. Ngororo argued that Mr. Marando was playing delaying tactics and prayed that she be allowed to proceed ex-parte.


Bearing in mind that Mr. Marando knew of the hearing dates on both occasions and yet he decided not to put up appearance and found it fit not to communicate to the court why he did not appear the court found that Mrs. Ngororo's application for leave to proceed ex-parte was not in the circumstances unreasonable. She was allowed to narrate the respondent's case to the court ex-parte. Apparently even the applicant did not appear on both occasions.

From what I have heard from Mrs. Ngororo, learned counsel for the respondent, and my inspection of the exchequer receipt book and the permit book T.I.F4 which were brought to court, it is amply clear that the document - annexure H to the affidavit in the possession of the applicant and which document purported to be a valid resident permit class A was not issued by the Immigration Department. Nor is the shs.2000/= shown in the purported permit as having been paid as fees for issue of the permit vide E.R. No. 0061819 received by the Immigration Office.

The whole thing appears to be a big forgery. I pity the applicant who has clearly been swindled. But it is one thing for the Court to feel sorry for the applicant and quite another for the court to say that because the applicant has been a victim of forgery then the Immigration authority has to issue a valid resident permit to the applicant. The argument that the Minister of Home Affairs had no power to serve deportation order against the applicant before the question whether or not his purported resident permit Class A-Annexure H to the affidavit is valid is answered is well taken. This was the reason why this court had earlier ordered that the applicant be released from custody and allowed to remain in the country pending determination of the application regarding the validity of annexure H to the affidavit.

Now that the court is satisfied that the purported resident permit Class A -Annexure H to the affidavit is a forgery and has not been issued by the Immigration Department; it follows as night follows day that the applicant's presence in Tanzania is unlawful. The application for orders of Mandamus and certiorari is accordingly dismissed. Consequently the Ministers Order dated 14/5/86 is hereby restored.

The respondent to have his costs.

  
N. S. MNZAVAS  
JALI KIONGOZI

Dar es Salaam.  
13/6/86.