

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO.308 OF 2003

IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND
MISC. PROVISIONS) ORDINANCE CAP.360

AND

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

BETWEEN

PC JULIUS MKOMWA.....APPLICANT

VERSUS

1. INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

2. ATTORNEY GENERAL.....2ND RESPONDENT

RULING

SHANGWA, J:

This is a preliminary objection against the Applicant's application for leave to file an application for the orders of certiorari and mandamus to quash the decision of his dismissal from the Police Force where he had been engaged as a Police Constable and to compel the Inspector General of Police, 1st Respondent to reinstate him to his employment.

The point of objection is squarely based on the fact that the Applicant's application is hopelessly out of time. Learned State Attorney for the respondents submitted that under S.18 (3) of the Law Reform (Fatal Accident Miscellaneous Provisions Ordinance) Cap.360, an application for leave to apply for orders of certiorari and mandamus has to be made within six months of occurrence of injustice on the part of the Applicant.

In reply, the Applicant submitted that the objection is based on a non existing law and asked the court to dismiss it with costs.

I entirely agree with learned State Attorney for the Respondents that the Applicant's application had to be filed within six months from the date when he was dismissed from the Police Force. This is in accordance with S.18(3) of the Law Reform (Fatal Accident Miscellaneous Provisions Ordinance) Cap 360 as amended by Act No.27 of 1991. The relevant portion of this section reads as follows:

“S.18 (3). In the case of an application for an order to remove any... Order, Conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of the proceedings or such shorter period as may be prescribed under any Act...”

The facts show that the Applicant was dismissed from the Police force on 15.8.1998 and the application for leave to apply for the prerogative orders of certiorari and mandamus was filed in this court on 7.11.2003 which is a period of about five years later. It is plain therefore that there was undue delay in filing it.

It has always been the practice of this court in its day-to-day administration of justice to abstain from entertaining applications or appeals which have hopelessly been filed out of time such as this application.

At any rate, I do not think that this is a suitable case in which the prerogative Orders of Certiorari and mandamus can

be issued. I do not think so because the relationship between the applicant and the 1st Respondent, the Inspector General of Police is contractual. The applicant was engaged in the Police Force as a Police Constable. He was allegedly dismissed by the Regional Police Commander at Mbeya for misconduct and absconding from Police Force which he denies. Under such a situation, certiorari cannot lie to quash his dismissal and mandamus cannot lie to compel his reinstatement.

For policemen such as the Applicant and Military men who claim to have wrongfully been dismissed from the Police Force or Defence Force by their Superior officers or Commander in-Chief, the appropriate procedure to be followed by them is to sue for damages and pray for declaratory orders.

In other words, wrongful dismissal of an employee from the Police Force or Armed Forces cannot be challenged in the High Court by applying for prerogative orders such as certiorari and mandamus.

In the final analysis, I uphold the point of objection raised by the respondents. In brief, as the applicant's application for leave has been filed hopelessly out of time, and as the orders of certiorari and mandamus cannot be issued in such cases, I hereby dismiss it. Each party to bear its own Costs.


A. Shangwa

JUDGE

3.2.2005.

Delivered in open Court at Dar es Salaam this 3rd day of February, 2005.




A. Shangwa

JUDGE

3.2.2005