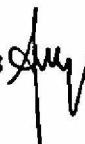


IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[MAIN REGISTRY]
AT DAR ES SALAAM
MISCELLANEOUS CIVIL CAUSE NO. 27673 OF 2023
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
PREROGATIVE
ORDERS OF CERTIORARI AND MANDAMUS
AND
IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS
MISCELLANEOUS
PROVISION) ACT, CAP. 310 R. E. 2019
AND
IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS
MISCELLANEOUS PROVISIONS) (JUDICIAL REVIEW AND FEES) RULES, GN
NO. 324 OF 2014.
AND
IN THE MATTER OF THE TANGANYIKA LAW SOCIETY ACT, CAP. 307 R. E.
2002
AND
IN THE MATTER OF THE TANGANYIKA LAW SOCIETY (MEETINGS)
REGULATIONS, G.N NO. 523 OF 2020.
AND
IN THE MATTER OF AN APPLICATION TO CHALLENGE THE DECISION OF
THE TANGANYIKA LAW SOCIETY THROUGH ITS GOVERNING COUNCIL
FOR CALLING EXTRA ORDINARY GENERAL MEETING WHICH IS INTENDED
TO BE HELD ON 16TH DECEMBER, 2023 FOR BEING UNREASONABLE,
ILLEGAL, IRRATIONAL AND TAINTED WITH PROCEDURAL IMPROPRIETY.
BETWEEN
BARTAZARY BOSCO MAHAIAPPLICANT
VERSUS
TANGANYIKA LAW SOCIETY 1ST RESPONDENT
ATTORNEY GENERAL. 2ND RESPONDENT



RULING

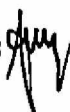
08/03/2024 & 28/03/2024

MANYANDA, J.:

Baltazar Bosco Mahai, the Applicant, has filed in this Court an application under Sections 18(1) and 19(3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 R. E. 2019] and Rules 5(1) and (2)(a), (b), (c) and (d), (6), 7(5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, GN No. 324 of 2014.

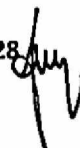
The application is brought by way of a Chamber Summons accompanied with an Affidavit sworn by the Applicant and Statement of Facts which contain the reliefs sought as listed in the Chamber Summons. It is opposed by the First Respondent who filed a counter affidavit affirmed by one Mariam Othman, the Executive Director and Principal Officer of the First Respondent. The Second Respondent did not contest the application, hence, did not file counter affidavit or Reply Statement of Facts.

The Chamber Summons bears, among others, the following prayers: -



1. That, this Honourable Court be pleased to grant leave to the Applicant herein to file an Application for Judicial Review praying for Certiorari to call for, quash and set aside the decision of the Tanganyika Law Society dated 1st December, 2023 through its Governing Council calling for an Extra Ordinary General Meeting for being unreasonable, illegal, irrational and tainted with procedural impropriety for failure to follow the law; and
2. That, this Honourable Court be pleased to grant leave to the Applicant herein to file an Application for Judicial Review praying for Mandamus to compel the First Respondent to convene the said Extra Ordinary General Meeting in compliance with the law.

Briefly, the background of this matters as gleaned from the affidavittal pleadings is as follows: That, on 01/12/2023 the First Respondent informed its members via email that its Governing Council issued a Notice of Extra Ordinary General Meeting intended to be held on 16/12/2023. The said Notice was accompanied with the First Respondent's Governing Council's Notice to all members in respect of the Society Extra Ordinary General Meeting informing them that the Society Extra Ordinary General Meeting was pursuant to a requisition



notice for Extra Ordinary General Meeting received on 29/11/2023 from Divina Attorneys on behalf of 140 members.

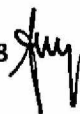
The notice of the Governing Council to the members in respect of the said meeting states the reasons to be the amendment of Tanganyika Law Society Act, in respect to the qualification of the members of the Governing Council and proposed Bill of the Tanganyika Law Society Regulation, the agenda of the meeting includes, among other things, composition and powers of the National Advocates Committee and Regional Advocates.

The First Respondent gave its members, including the Applicant, a 14 days' Notice before the said meeting but did not supply them with meeting documents.

As a result, the Applicant, feeling violation of the law and in protest for his rights to have full participation at the affairs of the First Respondent, preferred an application for judicial review for orders of certiorari and mandamus in order to have the decision to hold the meeting quashed and another meeting be arranged according to the law.

The Statement of Facts contains five (5) grounds upon which the reliefs are sought as follows: -

- a) The emergency Extra Ordinary General meeting of the Governing Council has been convened without following proper procedures and with insufficient quorum. The decision of the First Respondent made on 01/12/2023 calling for an Extra Ordinary General Meeting to be convened on 16/12/2023 is irrational, and is tainted with procedural impropriety and illegality for failure to follow the law because the notice calling for that meeting is very short contrary to the time limit provided by the law.
- b) The decision of the First Respondent calling for the Extra Ordinary General Meeting is unreasonable and irrational as there are no exceptional circumstances warranting calling for such a meeting as envisaged in the law.
- c) Whereas the notice of the Governing Council to the members in respect of the said meeting states the reasons to be the amendment of TLS Act in respect to the qualification of the members of the Governing Council and proposed Bill of TLS Regulation, the agenda of the meeting includes among other things, composition and powers of the National Advocates Committee and Regional Advocates, while this was not among the circumstances led to the deliberation of the Governing Council and the reason for calling for Extra Ordinary General Meeting.

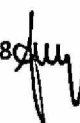


d) The decision of the First Respondent calling for Extra Ordinary General Meeting is unreasonable, irrational and tainted with procedural impropriety and illegality as the documents of the meeting have not been circulated to the members as per the law up to when this Application was lodged while the said meeting is intended to be convened on 16/12/2023.

e) That, the decision of the First Respondent calling for an Extra Ordinary General Meeting is irrational, illegal and is tainted with procedural impropriety as the notice to the member was signed by the President of the First Respondent instead of the Secretariat as required by the law.

At the hearing of the application, the Applicant appeared in person unrepresented while Messrs. John Seka and Hekima Mwasupi, learned Advocates represented the First Respondent. Mr. Ayubu Gervas Sanga, learned State Attorney, appeared for the Second Respondent.

The Applicant submitted in support of his application arguing that under Rule 5(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, GN No. 324 of 2014, that application for judicial review cannot be filed in court unless leave is sought and obtained prior.

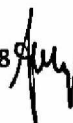


He went on submitting that for leave to be granted, there are conditions to be met as stated in the case of **Emma Bayo vs. the Minister for Labour and Youth Development and 2 Others**, Civil Appeal No. 79 of 2012 (unreported) by the Court of Appeal of Tanzania sitting at Arusha. Also, in the case of **PAVISA Enterprises vs. the Minister for Labour Youths Development and Sports and Another**, Misc. Civil Cause No. 65 of 2003 (unreported) by this Court, Hon. Mlay, J.

The Applicant listed the said conditions as follows: -

1. The applicant must have sufficient interest;
2. There must be arguable case;
3. There must be a decision made over the complained matter;
4. There must be exhaustion of local remedy; and
5. The application must have been made within limit of six months from the date the action or decision complained of.

The purpose of leave, according to the Applicant is for screening purposes, it is for the High Court to satisfy itself that the applicant made an arguable case to justify filing of the main application for judicial review.



The Applicant bolstered his point by citing the case of **Attorney General vs. Wilfred Onyango Mganyi @ Dadii and 11 Others**, Criminal Appeal No. 276 of 2006, cited in **Emma Bayo's case (supra)**.

Then the Applicant went on analyzing the conditions he had listed seriatim as follows: -

First, he has interest in this matter as stated in paragraph 1 of the affidavit. That, being a practicing advocate of the High Court and courts subordinate thereto, with Roll Number 9586 and active member of the First Respondent, he has sufficient interests.

Second, there is existence of arguable case as per the facts on which relief is sought. There is a clear arguable case per paragraph 4 of the Statement of Facts especially in 4.1 to 4.5 namely: -

1. Announcement of the Emergence or Extra Ordinary General Meeting of the 1st Respondent through the Governing Council notification was in violation of proper procedure and insufficient coram;
2. The decision dated 01/12/2023 calling for the Extra Ordinary General Meeting on 16/12/2023 is irrational and procedurally improper and illegal for failure to follow the law as the notice was too short as opposed to the time provided by the law;



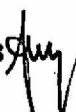
3. The impugned decision for calling for Extra Ordinary General Meeting on 16/12/2023 is unreasonable as there are no exceptional circumstances for calling it;
4. The impugned decision for calling for Extra Ordinary General Meeting on 16/12/2023 is irrational and irregular as the documents of the meeting have not been circulated to the members; and
5. The impugned decision for calling for Extra Ordinary General Meeting on 16/12/2023 is irrational and irregular for the notice was signed by the Chairman not the Secretary.

Third, the notices calling for the Extra Ordinary General Meeting are final as far as decision of convening the meeting is concerned.

Four, this application for leave has been made promptly within the time limit of six months from the complained action dated 01/12/2023, it was filed on 14/12/2023.

As regard to the fifth element whether there is availability of alternative remedy, the answer is in negative.

Then, the Applicant rested his submissions by opining that from his submissions, the averments in the affidavit and the statement, the conditions for grant of leave to apply for judicial review were established.



He prayed the application to be granted.

Then Mr. Sanga for the Second Respondent submitted limiting himself to points of law only because they did not contest the application by filing a counter affidavit or a reply statement.

He joined hand with the Applicant submitting that Rule 5(1) of GN No. 324 of 2014, require the Applicant to seek and obtain leave before filing the application for judicial review. He subscribed to the position of the law that grant of leave is not automatic, there are conditions to be fulfilled as spelt in the case of **Emma Bayo (supra)** namely: -

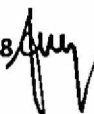
1. Existence of sufficient interest of the applicant in the matter. He was of the view that the Applicant being a practicing advocate has sufficient interest. That this Court may take judicial notice under Section 58 of the **Evidence Act**, [Cap. 6 R. E. 2019] and the facts deponed in paragraph 3 of the counter affidavit by the 1st Respondent;
2. There is a decision as deponed in paragraph 3 of the counter affidavit;
3. There is promptness of filing of this application, which has been filed within the six months period provided under Rule 6 of GN No. 324 of 2014;



4. There has been exhibited exhaustion of remedies, the **Tanganyika Law Society Act**, [Cap. 341 R. E. 2019] and the **Tanganyika Law Society (Meetings) Regulations, 2020, GN No. 523 of 2020;**
5. There is arguable case because according to Regulations 9, 10 and 11, any meeting needs a 21 days prior notice to all members and circulation of the meeting documents within 14 days. In this matter the notice was issued on 01/12/2023 and the intended meeting on 16/12/2023. Whether there was compliance or not is an arguable issue.
6. The coram of the Governing Council may also raise an arguable issue.

Mr. Sanga concluded his submissions by submitting that the conditions for grant of leave have been made up. The application may be granted.

Then Mr. Seka submitted in opposition to the application. However, he conceded as correct, the conditions precedent to grant of leave for filing of an application for prerogative orders as enumerated in **Emma Bayo's case (supra)**.

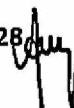


Then, he submitted that there is another layer to it as propounded in the case of **Latan'gamwaki Ndwati and 7 Others vs. the Attorney General**, Misc. Civil Application No. 178 of 2022.

That the complaint before this Court on the legality of a meeting of the Governing Council held on 01/12/2023 complained of by the Applicant is a decision of an internal organ of the Tanganyika Law Society (TLS). The Applicant is not a member of the Governing Council and did not attend at the said meeting. The Counsel went on submitting that there is no decision, no resolution and no minutes of the Governing Council placed before this Court, presented in this Court, which could allow this Court to check if there is sufficient interest, but rather it is a notice for convening the Extra Ordinary General Meeting. He argued that the Applicant told mere hearsay.

Mr. Seka was of the view that the tests in **Emma Bayo's case (supra)** were not established, hence, there can be no possibility of an arguable case based on a decision of the Governing Council which is an internal organ.

As regard to interest of the Applicant, Mr. Seka submitted that the same has not been established because by mere been an active member of the TLS, does not entitle the Applicant to have interest in the



Governing Council to which he has no right of audience. The Counsel submitted that the Applicant is not among the elected members of the TLS from Zones and Chapters as a representative who have sufficient interest. Had the Applicant was among the representatives, he would have interest.

The Counsel submitted in respect of the impugned decision that the Applicant is complaining about a notice of convening the meeting which is a discretion of the Governing Council in terms of the law of which exercise cannot be challenged by the Applicant. He added that there is a room for him to challenge the decision of issuance of a notice which is at the meeting itself he is trying to block.

The Counsel was of the view that coming to court, while there is a chance of challenging the decision, the Applicant has come prematurely.

Mr. Seka submitted also that the issue of arguable case is also not established. The issues of coram, attendance, minutes and the like are not matters of this Court, but they are of the TLS for her to investigate. He insisted that since the challenge is on the discretion of the Governing Council, to which the Applicant is not a party and there has been no decision, then there is no arguable case. That in case leave is granted,

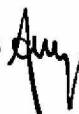


in the main case the allegations by the Applicant will be challenged as hearsay.

The Counsel referred this Court to the case of **Latan'gamwaki's case (supra)**, where a Ugandan case of **Kikonda Butema Farms Ltd vs. The Inspector General of Police**, Civil Appeal No. 35 of 2002 was cited with approval, holding that at leave stage, the court is to look at the statement of facts, affidavit and its attachments and it is not necessary for the court to gauge out if the applicant will succeed.

He was of the view that in this application, there is nothing tangible presented by the Applicant making likelihood of succeeding.

He also referred this Court to the case of **John Mwombeki Byombalirwa vs. The Regional Commissioner and Regional Police Commander, Bukoba** [1986] TLR 73 (HC) on the grounds for which this Court can grant prerogative orders and opined that the TLS has discretionary powers which are delegated to the Governing Council for welfare of its members, hence, the decision of the Governing Council is also discretionary. That, any attempt to fetter this power must be discouraged unless there are strong reasons which have not been canvassed by the Applicant.



He prayed this Court to decline to grant leave and permit the TLS to conduct its Extra Ordinary General Meeting which has been stayed all along the way since 15/12/2023.

In rejoinder, the Applicant basically reiterated his submissions in chief insisting that there are arguable issues demonstrated in paragraph 4 of the affidavit. As regard to existence of decision, he said that there is a decision which was given by the Governing Council as per Annexure BBM-1 and BBM-2.

About exhaustion of remedies, the Applicant rejoin that there were no remedies, there was no room to challenge the decision to convene the meeting other than in this Court.

Those were the submissions by the parties. I commend them for their good job. The same has eased the task of this Court in determining this matter. I have dispassionately gone through the submissions and record; I find the main issue in this matter is whether the application meets the conditions for grant of leave to apply for judicial review.

In the first place, the parties in this matter are in agreement on the position of the law on the tests for grant of leave to apply for judicial review as laid down in the cases of **Emma Bayo's case (supra)** and **PAVISA Enterprises (supra)** cited by the Applicant and the



Latan'gamwaki's case (supra) cited by the Counsel for the First Respondent.

The first test is whether there is existence of interest of the applicant in the matter, it has been submitted by the Applicant and supported by the State Attorney that he has proved to have interest in the matter he is complaining about because he is an active member of the First Respondent.

The Counsel for the First Respondent opposes this argument because, according to him, mere been an active member of the First Respondent does not in itself entitle him to have interest requisite for grant of leave. The Counsel was the view that had Applicant was a member of the Governing Council which made a decision to convene the meeting, he could have established interest because the decision he is complaining about was made by a Governing Council to which he is neither a member nor did he attend the meeting.

As it can see, from the record and the submissions of the parties in this matter, it is not disputed that the Applicant is an active member of the First Respondent, it is also not disputed that there were two notices issued for convening an Extra Ordinary Meeting intended to be held on 16/12/2023. What the parties, in particular the Applicant and the



Counsel for the First Respondent holds that the existence of interest of the Applicant in the matter complained of. While the Applicant says being a member, he is entitled to participate in the affairs of the First Respondent and that a meeting convened in violation of the procedural law for convening such meetings deny him of his right to so fairly participate.

On the other hand, the Counsel for the First Respondent holds that the Applicant by mere being a member of the First Respondent does not confer him with interest sufficient to warrant issuance of leave because the decision to convene the meeting was made by a Governing Council, an internal organ of the First Respondent, to which the Applicant is not a member.

I have visited the two notices and found that basically they invite members of the First Respondent to attend at a meeting. The first notice attached to the affidavit as BBM-1 dated 01/12/2023 signed by one Mariam Othman, Secretary, reads as follows: -

"NOTICE IS HEREBY GIVEN THAT in accordance with Sections 21(2) of the Tanganyika Law Society Act Cap 307 as amended, the Extra Ordinary General Meeting of the Tanganyika Law Society will be held both online and Physical in Dar es Salaam on Saturday, 16th December,



2023 from 9:30 a.m. Venue for the Meeting will be communicated in due course."

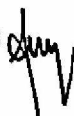
This notice was followed by another Notice annexed to the affidavit of the Applicant as BBM-2 dated on the same 01/12/2023, it is headed: -

"Notice to members in respect to the Extra Ordinary General Meeting of the Tanganyika Law Society."

The second Notice was signed by one Harold Giliard Sungusia, the President of the TLS. The purpose of these notices was to convene a meeting of members of the First Respondent, these are the members of the First Respondent with interests in the affairs of the First Respondent, the TLS, including the Applicant.

Moreover, it was attached as mandatory condition in the said notice that there would be awarded some points to members in attendance at the meeting. The points are vital to the members when it comes to renewal of their practicing licences. It means that the Applicant, been an active member has vested interest in the matter as far as his business is concerned.

In his submissions, Mr. Seka, argued that the decision of the First Respondent was discretionary through its Governing Council to which



the Applicant is not a member, therefore, he could not have vested interest

In my view, as far as the meeting is concerned, since it is very clear from the notices that the attendee of the intended meeting were members of the First Respondent, including the Applicant, it suffices to establish the requisite interest for purposes of grant of leave.

The second test whether there is existence of arguable case, the Applicant submitted that there exists an arguable case as per the facts on which relief is sought especially as indicated in paragraph 4 of the Statement of Facts especially in 4.1 to 4.5 namely: -

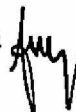
1. Announcement of the Emergence or Extra Ordinary General Meeting of the 1st Respondent through the Governing Council notification was in violation of proper procedure and insufficient coram;
2. The decision dated 01/12/2023 calling for the Extra Ordinary General Meeting on 16/12/2023 is irrational and procedurally improper and illegal for failure to follow the law as the notice was too short opposed to the time provided by the law;



3. The impugned decision for calling for Extra Ordinary General Meeting on 16/12/2023 is unreasonable as there are no exceptional circumstances for calling it;
4. The impugned decision for calling for Extra Ordinary General Meeting on 16/12/2023 is irrational and irregular as the documents of the meeting have not been circulated to the members; and
5. The impugned decision for calling for Extra Ordinary General Meeting on 16/12/2023 is irrational and irregular for the notice was signed by the Chairman not the Secretary.

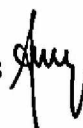
The Applicant was supported by the State Attorney submissions that there is arguable case because according to Regulations 9, 10 and 11 of the Tanganyika Law Society (Meetings) Regulations, 2020, specific mandatory procedures are provided for convening of Extra Ordinary Meeting such as requirement of a 21 days' prior notice for requisitioning of an Extra Ordinary General Meeting to members and circulation of the meeting documents within 14 days. In this matter the notice was issued on 01/12/2023 and the intended meeting on 16/12/2023. Whether there was compliance or not is an arguable issue.

On his side, the Counsel for First Respondent, opposed the Applicant's contention on existence of arguable case arguing that



arguable case has not been established because the acts complained of by the Applicant are internal matters of the First Respondent such as issues of coram, attendance, minutes and the like are not matters of this Court, but they are of the TLS for her to investigate. He insisted that since the challenge is on the discretion of the Governing Council, to which the Applicant is not a party and there has been no decision, then there is no arguable case and the allegations by the Applicant will be challenged as hearsay in court.

As it can be seen, in this issue, the complaint by the Applicant is procedural impropriety in the process of convening of the meeting. It is contended that the legal procedures for convening an Extra Ordinary Meeting were not adhered to. The Counsel for the First Respondent submissions not only tell that the procedures were followed, but also questions capacity of the Applicant to challenge a decision to convene the meeting in issue because the process concern internal affairs. In my firm view, at this stage of leave, the scope is limited, this Court cannot go into issues of evidence supposed to be investigated in the main application.



The principles of law in applications for leave limit this Court not to delve into the nitty gritty of the contentious issues but just to find out if there exists one.

In the case cited by the Applicant, the case of **Emma Bayo (supra)** the Court of Appeal of Tanzania stated as follows: -

"At the stage of leave, the trial judge should not have gone into the question whether the Minister violated the principles of natural justice for the purposes of quashing his decision under the prerogative orders of the High Court."

Also, in the case cited by Mr. Seka, the case of **Latan'gamwaki (supra)**, this Court, Hon. Kamuzora, J. quoted with approval what was stated in the Ugandan case of **Kikonda Butema Farms (supra)** at page 17 as follows: -

"The trial judge is enjoined to look at the statement of facts, the accompanying affidavit and any annexure that might be attached to the application before granting leave. It is not necessary at that stage to consider whether the Applicant would succeed or not. The Applicant has to present such facts that would satisfy [the] court that [a] prima facie case exists for leave to be granted."



This Court after comparing the averments in the affidavit of the Applicant versus the counter affidavit of the First Respondent and taking into consideration the submissions in this matter, is of the view that there exist controversial issues between the parties capable of been investigated by this Court as found in paragraphs 7, 8 9 10 11 and 12 compared to the averment in paragraphs 4, 5, 6 and 7 in the counter affidavit respectively.

It is averred in paragraph 7 of the affidavit that there is a requirement of issuance of a notice to members of a Governing Council, which was not issued, paragraph 4 of the counter affidavit avers that there is no need of a notice. Paragraph 10 of the affidavit avers that there was variance of agenda from the ones approved in November to the ones distributed, Paragraph 5 of the counter affidavit denies the same. Whether the information by the Applicant is hearsay is subject to investigation by this Court.

Paragraph 11 of affidavit avers that a 14 days' notice is necessary while paragraph 6 of the counter affidavit contests averring that a shorter time notice is allowable. Paragraph 11 avers requirement of supply of meeting documents 14 days before, it is contested in



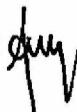
paragraph 7 of the counter affidavit that there is no such requirement in round table meetings.

Moreover, the Applicant attacks the notice signed by the President of TLS as irregular in that such notices are supposed to be signed by the Secretary. The Counsel for the First Respondent opposed this contention arguing that it is an internal affair of the TLS. Whether the Applicant is true or the Respondent is true, these are matters ripe for investigation by this Court in the main application.

In the result, I find that the totality of all the points discussed above establish arguable case.

The third test is whether there is existence of a decision, it is averred in paragraphs 5 and 6 of the Applicant's affidavit and admitted in paragraph 3 of the counter affidavit that on 30/11/2023 the Governing Council conducted an emergency Extra Ordinary Meeting to deliberate, among other things, on the lodged notice for requisition. That the Governing Council of the First Respondent resolved that the notice for requisition was not sufficient to call for Extra Ordinary General Meeting of the Society.

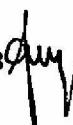
The facts about existence of emergency meeting of the Governing Council are admitted to by the First Respondent in their counter affidavit



as true, which means, the same are not contested. Then, the contention by Mr. Seka that there is no decision presented by the Applicant in this Court making his averments hearsay is misplaced. I say so because it is a long-standing position of the law that parties are bound by their pleadings. Moreover, with due respect to Mr. Seka, this Court is of the view that since the facts about existence of a decision to convene the meeting are admitted in the counter affidavit as explained above, this fact is not hearsay to the Applicant.

It is my considered opinion that in application for leave to apply for judicial review, existence of the impugned decision may be express or deduced from the totality of the circumstances of the case, otherwise latent decisions, like in the present matter, may defeat justice. In the result, I find that this test has been well established.

Regarding the fourth test whether there has been exhibited exhaustion of remedies, the Applicant argument, supported by the State Attorney, is that there is no any remedy other than resorting to this Court. The Counsel for the First Respondent argued that there are remedies to the Applicant upon attending at the meeting itself which the Applicant is trying to block.



However, the complaint by the Applicant is intending to challenge the decision to convene the meeting. Can one challenge such a decision after the same meeting is held. The answer is no because by the time the meeting which, according to him, is illegally been convened, is held his move to block it will have already been overtaken by event. In such circumstances, I agree with the Applicant and the State Attorney argument that, there are no other remedies available to him.

Mr. Seka submitted further by way of orbiter opining that the TLS has discretionary powers delegated to the Governing Council for welfare of its members, hence, the decision of the Governing Council is discretionary also. That any attempt to fetter this power must be discouraged unless there are strong reasons which have not been canvassed by the Applicant.

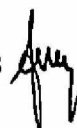
I have considered the argument by the Counsel; it is true that where there are no compelling reasons courts should not interfere with discretionary powers of bodies. However, where the same bodies act in contravention of the law, courts should not hesitate from exercising their judicial review powers as well.

This Court, Hon. Mwalusanya, J. in the case of **John Mwombeki Byombalirwa (supra)**, cited by Mr. Seka, stressed on the essence of judicial review powers of this Court by stating at page 73 as follows: -

"Judicial review is an important weapon in the hands of judges of this country by which an ordinary citizen can challenge oppressive administrative action and judicial review by means of prerogative orders (certiorari, prohibition and mandamus) is one of those effective ways employed to challenge administrative action[s]. It is my conviction that the courts should not be too eager to relinquish their judicial review function simply because they are called upon to exercise it in relation to weighty matters of state. Equally however, it is important to realize that judicial review is not the same thing as substitution of the court's opinion on the merits for the opinion of the person or body to whom a discretionary decision making power has been committed."

It follows therefore that, in my considered opinion, the Applicant has made his case as far as leave is concerned as explained above. The main issue in this case whether the application meets the conditions for grant of leave to apply for judicial review, is answered in affirmative.

In the upshot, for reasons stated above, I find that this application has merit. Consequently, I do hereby grant leave to the Applicant to file



the application for prerogative orders of certiorari and mandamus as prayed within the prescribed period by the law. Order accordingly.

Dated at Dodoma this 29th day of March, 2024.




F. K. MANYANDA

JUDGE

Delivered at Dodoma this 29th day of March, 2024 in the presence of the parties via virtual court. Right of Appeal explained to the parties.




F. K. MANYANDA

JUDGE