

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)
AT DAR ES SALAAM
MISCELLANEOUS CAUSE NO. 6575 OF 2024
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS
OF CERTIORARI
AND
IN THE MATTER OF DISMISSAL FROM EMPLOYMENT OF RABSON MOSHA
AMELDA HONGA AND DENICE KASIMBAZI
BETWEEN
RABSON MOSHA1ST APPLICANT
AMELDA HONGA..... 2ND APPLICANT
DENICE KASIMBAZI3RD APPLICANT
VERSUS
THE INSPECTOR GENERAL OF POLICE1ST RESPONDENT
THE ATTORNEY GENERAL2ND RESPONDENT**

RULING

05th & 09th April 2024.

A. J KIREKIANO

This is an application for leave to apply for judicial review for an order of certiorari. The application is brought under sections 18 (1) and 19 (3) of the **Law Section (Fatal Accidents and Misc Provision Act Cap 310 [RE 2019]** and Rule 5 (1) (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. The application is supported by an affidavit jointly sworn by the applicants supported by a joint statement of facts.

During the hearing of this application, the applicants were represented by Mr. Peter Majenjela learned advocate. The respondents had the service of Miss Pauline Mdendemi learned state attorney who intimated that the respondents were not contesting the application. They thus did not file a counter affidavit.

It is worth noting at this stage that notwithstanding that no counter affidavit was filed to contest the application and the application is not contested by the respondents, it is the duty of this court is to determine whether the conditions for the grant of the application have been met or otherwise.

Briefly stated the facts leading to this application are that the applicants were employed in the Police Force and stationed at Julius Nyerere International Airport Dar es Salaam. The 1st and 2nd applicants were in the rank of corporal while the 3rd applicant was a police constable. Sometime in 2022, They were accused and charged in the police court martial with bad conduct, soliciting and taking bribe money contrary to Police General Order (P.G.O) No. 106. 5.

In the end, in what was calculated as a disgrace to the police force, they were terminated from the service. Their appeal to the Inspector General of Police was dismissed and the decision was communicated to

them on 5/10/2023. If granted leave the applicant seeks to challenge the decision on writ of Certiorari thus;

The decision of the first respondent i.e. Inspector General of Police dated 5th October 2023 terminating the 1st, 2nd and 3rd applicants for being tainted with illegality in procedure being contrary to the principles of natural justice for being biased and unreasonable.

The grounds advanced in the statement are;

1. ***Illegality***; *the decision reached by the Inspector General of Police was illegal for not considering the illegalities in the decision by the ACP Geremia Shila*
2. ***Unreasonableness and unfairness***; *that the said decision is unreasonable and unfair for upholding the biased decision for termination of ACP Geremia Shila which was not based on any evidence.*
3. ***Procedural irregularity***; *The decision was totally and whole improper for the non-adherence to the procedure in the hearing of the application.*

In submission in support of the application Mr. Majenjela for applicant argued that the application has met the two necessary tests, given the decision in **Cheavo Juma Mshana vs Tanapa and 2 Others (Misc. Civil Cause 7 of 2020) [2021] TZHC 2254 (18 February,** that is to say; **first** the applicants must have applied within six months after the date of the act or commission to which the application relates

and **second**, there should be an arguable or prima facie case to justify the main application.

Mr Majenjela submitted that the application was timely filed, that is within six months as provided under Rule 6 Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. This is to say, the decision to terminate the applicants was issued on 5/10/2023 and this application was filed on 26th March 2024.

Concerning sufficient cause or prima facie case the counsel for the applicants referred to paragraphs. 5, 6, 8 and 9 of the applicant's affidavit stating that the applicants have demonstrated an arguable case sufficient enough to warrant the grant of this application. Briefly in this paragraph, the applicants complain about illegalities, breach of procedure and bias.

The respondent as indicated through Miss Mdendemi responded by informing this court that they were not contesting the application.

Having heard the submission by the applicant's counsel, this court considered whether the application is merited. The position of law in considering whether leave should be granted has been stated in several decisions, including **Emma Bayo v. The Minister for Labour and Youth Development and others Civil Appeal No. 77 of 2012 CAT (Unreported)** but **Cheavo Juma Mshana** also cited by the counsel for

the applicant. **In the Chievo case** this court Mkapa J (as she then was) cited **Republic V Land Dispute Tribunal Court Central Division and Another [2006] 1 EA 321**, where it was held that;

Leave should be granted, if on the material available the court considers, without going into the matter in depth, that there is an arguable case for granting leave and that the leave stage is a filter whose purpose is to weed out hopeless cases at earliest possible time, thus saving the pressure on the courts and needless expense for the applicant by allowing malicious and futile claims.

As such in Cheavo Juma Mshana (supra) citing **R.V.T.R.C Exp National Federation of Self Employed and Small Business Ltd (1982) A.C. 617** this court held; that the applicant must demonstrate that there is an arguable case, thus a ground for seeking judicial review exists, the applicant has to show sufficient interest in the matter to which the application relates, and that the applicant has acted promptly.

Now in this application, the applicants in their joint statements have indicated what grounds they wish to argue in the application if granted leave, that is; matters of breach of procedure, illegalities and bias. At this stage, this court is not interested in the merit or otherwise of the complaints. It is enough that the applicants have indicated what they will

argue in the application, in fact, matters that can ground challenging the decision by way of judicial review.

Whether the applicants acted promptly, the yardstick of promptness is provided under Rule 6 of the Rules which provides;

*The leave to apply for judicial review shall not be granted unless the application for leave is made within **six months** after the date of the proceedings, act or omission to which the application for leave relates.*

The applicants as rightly argued, filed this application promptly that is within six months from 05/10/2023 when the impugned decision was issued till 26th Feb 2024 when this application was filed.

As such I have considered that the impugned decision terminating the applicant from the service affected the applicants personally thus the applicants have sufficient interest to pursue the application for judicial review.

In the end, I find that the application is merited, the applicants are granted leave to apply for judicial review within fourteen days for an order of Certiorari to challenge the respondents' acts. There will be no order as to costs. It is so ordered.




A. J. KIREKIANO

JUDGE

09.04.2024

COURT

Ruling delivered in absence of the applicants and in presence of Miss
Doreen Mhina State attorney for the respondents.

Sgd

A. J. KIREKIANO

JUDGE

09.04.2024