

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

MISCELLANEOUS CIVIL CAUSE NO. 20 OF 2018

In the matter of the Constitution of the Tanzania Football Federation

And

In the Matter of the Tanzania Football Federation Ethics Code Sections 55 to 69 and 74

And

In the Matter of the Purported Decision of the Ethics Appeals Committee that sat on the 14th day of March, 2018

In the Matter of the Decision of the Ethics Appeals Committee delivered on the 6th day of April, 2018

In the Matter of an Application for Leave to Apply for Order of *Certiorari*

BETWEEN

MICHAEL RICHARD WAMBURA.....APPLICANT

VERSUS

THE TANZANIA FOOTBALL FEDERATION.....RESPONDENT

R U L I N G

15 & 18 May, 2018

DYANSOBERA, J.:

This ruling is on an application for leave to apply for prerogative orders of *Certiorari* filed by the applicant Michael Richard Wambura. The application is directed against the Tanzania Football Federation, the present respondent. It is filed ex parte and under a certificate of urgency.



Briefly stated, the factual background is as follows. The applicant was the Vice President of the respondent, a Football organisation registered in the United Republic of Tanzania under the National Sports Council Act of 1967 as amended in 1971 with particular objectives including developing, promoting, controlling and regulating the sport of association football in all its forms throughout the territory of Tanzania Mainland.

In March, 2018 the applicant appeared before the Ethics Committee of the respondent charged with an offence of three counts. In the first count, the applicant was charged with illegally receiving money belonging to the respondent against section 73 (1) of the Ethics Committee Code of the Tanzania Football Federation. In the second count, he was charged with forgery of a letter demanding payment on behalf of JEKC Systems Ltd while knowing payment of the said amount to him was illegal against Article 73 (7) of the Ethics Code of the Tanzania Football Federation, issue of 2013. The same applicant was charged in the third count with engaging in activities which lower or put in disrepute the reputation on Tanzania Football Federation against Article 50 (1) of the Tanzania Football Federation (as amended in 2015).

The Ethics Committee found the applicant guilty in all counts and sentenced him to a ban for life from involvement on any football activities in accordance with section 73 (1) (c) of the Ethics Code of the Tanzania Football Federation issue of 2013.



Aggrieved, the applicant through the legal services of Dr. Masumbuko Lamwai, Mr. Emmanuel Muga and Mr. Kaunda, learned advocates, appealed to the Ethics Appeals Committee of the Tanzania Football Federation seeking the quashing and setting aside of the decision of the Ethics Committee, public apology, costs and sanctions against the individuals who acted maliciously against him.

The Ethics Appeals Committee of the respondent on 6th day of April, 2018 found the applicant's appeal lacking in merit and dismissed it in its entirety. It upheld the decision of the Ethics Committee and made further recommendations to the respondent to refer the allegations raised in the complaint to the relevant authorities for further actions. The applicant thought that the decision of the Ethics Appeals Committee flew into his face and intends to impugn it by way of judicial review through an application for prerogative orders of certiorari.

However, since leave of the High Court is a pre-requisite before applying for such prerogative orders, the applicant is now seeking for leave to file an application for prerogative orders of certiorari to bring the decisions of the Ethics Committee and the Ethics Appeals Committee of the respondent before this court for judicial review.

The application has been filed under Section 3 (2) of the Judicature and Application of Laws Act, [Cap. 453 R.E.2002], Section 17 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap. 360 R.E.2002] and Rule 5 (1), (2) and (3) of the Law Reform (Fatal Accidents and



Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN No. 324 of 2014 and any other enabling provisions of law. The orders being sought are:

- a) This Honourable Court may be pleased to issue an order granting the applicant leave to make leave to make an application for the order of certiorari to remove to the High Court and quashing the purported decision of the Tanzania Football Federation Ethics Committee that sat at Dar es Salaam on the 15th day of March, 2018 and the decision of the Tanzania Football Federation Ethics Appeals Committee dated 6th day of April, 2018 convicting the applicant herein for ethical offences related to fraud and receiving monies he was not entitled to receive contrary to the TFF Code of Ethics and sentencing the applicant to a life ban from football leadership
- b) Costs of this application be provided for
- c) Any other order(s) that this Honourable Court may deem fit.

On 10th day of May, 2018 when this application came for hearing, the applicant was represented by Dr. Masumbuko Lamwai, Mr. Emmanuel Muga and Mr. Kaunda, learned counsel.

Submitting in support of the application, Dr. Lamwai told this court that this ex parte application has been filed for seeking leave to apply for prerogative order of certiorari to remove to this court the decision of the Tanzania Football



Federation dated 14th March, 2018 and confirmed by the Tanzania Football Federation Ethics Appeals Committee in its decision given on 6th April, 2018. He said that the limitation period according to rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN No. 324 of 2014 is six months and the applicant is, therefore, well within the time. He said that under rule 5 (1) of the Rules, the application must be preceded by leave of the court which is ex parte and in accordance with rule 5 (2) of the Rules. There is an ex parte chamber summons supported by an affidavit of the applicant and, annexed to it is a statement as required under Rule 5 (2) of the Rules. According to counsel, procedurally this application is properly before the court.

Expounding on the affidavit, Dr. Lamwai submitted that under paragraph 2 of the affidavit, the applicant was, until the 20th March, 2018 the Vice President of the Tanzania Football Federation which is a public body created under the National Sports Council Act to cater for football administration in this country. He further submitted that football is a public matter pertaining to the whole nation. He pointed out that the applicant's complaint is that on 20th day of March, 2018 in purported disciplinary proceedings before the TFF Ethics Committee which in the submission of the applicant was contrary to the rules of the TFF, the Ethics Committee convicted the applicant of dishonesty and fraud and of having committed acts that brought the respondent into disrepute.



That the decision of the Committee is annexed to the affidavit as Ann. A 2. Counsel for the applicant said that although the applicant was sentenced on 20th March, 2018, the decision is undated. This court was asked to accept the invitation of the adoption by the applicant's counsel, of paragraph 7 of the affidavit which essentially gives seven grounds of the applicant's criticisms of the decision. Counsel for the applicant pointed out that the TFF Code of Ethics requires a preliminary investigation to be conducted upon a complaint being made and that after a preliminary investigation, if the Committee is satisfied that there is a case, the copy of the dossier of investigation is given to that person to accord him an opportunity to be heard. Counsel for the applicant told the court that from Ann. A 2, there is no evidence that a proper hearing was conducted. He contended that the proceedings did not start with a preliminary investigation and the applicant was not given an opportunity of reacting on the preliminary investigation. Further that, as stated in paragraph 3 of the affidavit, the applicant was summoned to appear before the Committee at a very short notice as seen in Ann. A 1 to the affidavit; the summons is dated to appear the following day for trial on 14th March, 2018 at noon which means that the applicant was not aware of what he was going to face. It is also contended that the applicant did not have sufficient time to prepare his defence on a charge of three counts and whose maximum sentence was a life ban which was slammed on the applicant. This court was called upon to find that a life



sentence was a serious matter which needed serious preparations in its defence and that the applicant was not given that opportunity. On the charge sheet (paragraph 3 (b) of the affidavit) annexed to the summons, counsel for the applicant stated that it was not accompanied by a report of investigation to the charges as required by the TFF Code of Ethics which would have enabled the applicant to prepare a defence against the charge.

Regarding paragraph 7 (e) of the affidavit, Dr. Lamwai contended there was no Scheduling of the proceedings whereby evidence is exchanged which is a requirement under rule 58 of the TFF Code of Ethics and that there was no file created as a result and this meant that the applicant was denied opportunity to comment on the evidence which was on record. Referring to Ann. A 2, counsel for the applicant asserted that it was not clear who presented any document whatever to the Ethics Committee; only that at pages 3 and 4 there is a general statement '*Secretariat iliwasilisha ushahidi*' without specifying who actually presented that evidence. Counsel for the applicant named it a '*sham trial*'.

On paragraph 4 of the affidavit, counsel for the plaintiff said that it is stated that the Ethics Committee rejected the objections as raised by the applicant's counsel as stated in paragraph 3 which went to the extent of saying that the applicant knew of the charges and that counsel requested for more time to prepare but the Committee lied that the counsel had consented to the proceeding which is strange. In his view,



the proceedings were being hurried to achieve a pre-determined decision. To support this, an affidavit of counsel was annexed to the affidavit as Ann. A 3 which shows that the counsel flatly denied to have consented to the proceedings continuing without being given time and that under paragraph 4 of his affidavit he had stated categorically that he had applied for time but this application was rejected. Being dissatisfied with the conviction by the Ethics Committee, the applicant employed the remedy by appealing to the Ethics Appeals Committee whereby the Code of Ethics rules were exhausted but flouted. That the Ethics Appeals Committee upheld the decision of the Ethics Committee of First Instance via Ann. A5. Counsel for the applicant contended that although the decision was given, it did not address to the procedural issues which were raised in the appeal.

On paragraph 4 of the Statement, it is submitted for the applicant that there was failure of natural justice in that the applicant was condemned unheard as he was not given an opportunity to defend himself after a proper preparation, it being a judicial exercise, the natural justice had to be observed.

As far as paragraph 4 (b) of the Statement is concerned, counsel for the applicant told this court that it is complained that the Ethics Committee wrongly assumed the jurisdiction for failure to carry out the investigation before putting the applicant on trial. On ground 4(c) which relates to ground 4 (a) on breach of natural justice, it was contended that there was



failure to conduct investigation and that the charge sheet was signed by the chairman of the Ethics Committee which implied that a prosecutor and a judge as they had already formed a decision.

Submitting on the requirements at the stage of leave, counsel for the applicant referred this court to various authorities. For instance, the case of **Senzia Alphonse Mbaga and 6 others v. Chairman of Election Commission** [1996] TLR 102 (HC) which dealt with a complaint of a right to be heard and ruled that under the rule 6 of GN. No. 324 of 2014 makes a requirement to seek leave but does not make circumstances in which such leave may be granted. Likewise, rule 7 provides for the procedure of hearing but is silent on what should be considered in granting a leave but that the reasons can be based on the affidavit, the accompanying statement and the submission. Counsel for the applicant, however, submitted that the documents presented are sufficient to exercise the discretion to grant leave to apply for certiorari and that each case depends upon its own material facts. This court was referred to the case of **Tanzania Portland Cement Co. Ltd v. Minister for Labour** [1996] TLR 303 (HC) in which it was held that where there are triable issues leave should be granted. Counsel for the applicant invited this court to find that in this matter there are three triable issues. These are, according to him, whether the rules of natural justice were breached in that the TFF Ethics Committee was a judge in his own cause, whether the rules of natural justice were breached



in that the applicant was not accorded the right to be heard and last, whether the TFF Ethics Appeals Committee flouted the rules of procedure under the TFF Ethics Code and TFF Constitution. Further buttressing this point, counsel for the applicant referred this court to the decision of the Court of Appeal in the case of **Sanai Murumbe and Another v. Muhere Chacha** [1990] TLR 54 in which it was held that among the reasons why certiorari should lie is a lack of jurisdiction, rules of natural justice have been violated and illegality of procedure or decision and that if any is breached, leave should be granted.

Counsel maintained that it is not their intention to go into the merits of the decision but they are seeking the court to investigate the actions of the bodies having duties to act judicially and that the case of **Lausa Alfian Salum and 116 others v. Minister for Lands Housing and Urban Development and National Housing Corporation** [1992] TLR 293 (HC) gives circumstances under which prerogative orders can be given.

Counsel also submitted that the TFF Committee is a public body with public duty to ensure that TFF is ethically managed; it undertakes supervision of the TFF National Sports. That the life ban is a serious sentence which required them to act judicially; they being judicial bodies trying and sentencing and their conducts are penal but that what they did are tainted with illegality.



Counsel for the applicant insisted that in this matter, the affidavit, statement and submission have disclosed a prima facie case and the actions complained of need to be reviewed.

On the observation or holding by the court that the grant of leave to make an application for certiorari operates as an application for stay of proceedings until determination of the application under rule 7 (5) read together with rule 5 (6) of the Rules, counsel for the applicant submitted that the rule empowers the court while granting leave to apply for the order of certiorari to direct that such leave will operate as a stay of execution of the sentence until the determination of the main application. This court was told that the applicant was, until his suspension, the Vice President of the TFF. That by virtue of his office as a Chairman of Mara Football Federation, he had the right to seek the position of the Vice Presidency by that virtue is appointed as a Commissar for Matches under the Confederation of African Football and as a FIFA delegate representing this Region. Learned counsel told this court that at the time this application was filed they did not have information about the business which had been lined up for him by FIFA and that he is supposed to attend the FIFA Congress in Moscow and that this position will be lost if he cannot go because of the sham proceedings. Counsel for the applicant sought this court's leave to make an oral application under rule 2 of Order XLIII of the proviso to the CPC on the ground that this information came to their knowledge after they had filed this application. It was prayed for the applicant



that the court direct under rules 5 (6) and 7 (5) of the Rules that the sentence imposed on the applicant be stayed so that he can perform his duties he was given as a TFF Vice President. That in case, the leave is granted, there should also be a direction that costs be in the due course.

I have, with circumspection, considered the application, the verifying affidavit, the statement of claim and the submission by learned counsel for the applicant. I have also considered the legal positions and case laws pertaining to this application.

The issue for determination by this court is whether the complaints lay a legal basis for granting leave to apply for prerogative order of *certiorari*.

Judicial review is the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties. Judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but the decision making process itself. Its concern is with whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, and reached a decision which no reasonable body could have reached or abused its powers. In other words, the court is concerned only with reviewing, not the merits of the decision reached, but of the decision –



making authority concerned. It would scrutinise, the procedure adopted to arrive at the decision; to ascertain that it is in conformity with all the elements of fairness, reasonableness and most of all its legality.

I have no doubt in my mind that the reason for obtaining leave before making a substantive application for prerogative orders is a screen test. The purpose of the requirement for leave is to operate as a screening process to eliminate at an early stage any application, which is frivolous, vexatious or hopeless.

As the chamber summons depicts, the applicant is asking for the leave of this court to file an application for prerogative order of *Certiorari*. In making this application, the applicant is, in essence, complying with the legal requirements under Rule 5 (1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Procedure and Fees) Rules. The Court of Appeal of Tanzania emphasized on this requirement in the case of **Emma Bayo v. the Minister for Labour and Youths Development, the Attorney General and Tanzania Posts Corporation**: Civil Appeal No. 79 of 2012 (CAT)) that:

“it is now an established part of the procedural law of Tanzania that a person applying for prerogative orders in the High Court must first apply for leave, which if granted will be followed by a subsequent main application for the prerogative orders.....”



It is also provided under sub-rule (2) of rule 5 that an application for leave under sub-rule (1) shall be made ex parte to a judge in chambers and be accompanied by-

- a) A statement providing for the name and description of the applicant;
- b) The relief sought;
- c) The grounds on which the relief is sought; and
- d) Affidavits verifying the facts relied on

There is no dispute and the record clearly shows that before this court there is an ex parte chamber summons which is accompanied by the statement providing the name and description of the applicant, the relief sought the grounds on which the reliefs are sought and the affidavit verifying the facts relied on. The applicant has therefore, successfully complied with the requirements under sub-rule (2) of rule 5.

It should be recalled that the grant or refusal to grant the application for applying for prerogative orders is in the discretion of the Court. In tackling the issue there are factors to consider and which I propose and undertake to be guided by. These factors are the following:

1. Whether the application has been filed within the six months limitation period
2. Whether the applicant has shown that he has sufficient interest to be allowed to bring the main application



the CPC on the ground that this information came to their knowledge after they had filed this application. It was prayed for the applicant that the court direct under rules 5 (6) and 7 (5) of the Rules that the sentence imposed on the applicant be stayed so that he can perform his duties he was given as a TFF Vice President.

I have considered the prayer with judicious mind. There is no dispute that the request was not part of the application on hand. Normally, oral application is allowed only in rare and non-contentious litigation or where prompt action is required to protect the parties' interests.

Taking the course proposed by Dr. Lamwai would, in my view, amount to reviewing the decision for which the application is seeking leave to impugn by hearing and determining it, the power this court lacks at this stage. This is not a fit stage and situation where the sought order can be granted. Discussing on the oral application which was sought to be made under rule 2 of Order XLIII the proviso thereto of the Civil Procedure Code, this in the case of **Cooperative and Rural Development Bank v. Filton (Tanzania) Limited** [996] TLR 122 at p 125 observed:

"The nature of civil litigation is such that it offers equal opportunity to both parties. It is not one of surprises. Every stage in the process of litigation is regulated by rules which create an elaborate procedure for pleading. As a general rule, the defendant or respondent as the case may be is entitled to know the case against him by advance notice by way of a summons of whatever nature. And by established procedure by



this Court, all chamber summonses are supported by affidavit. This procedure has not been maintained over the ages for nothing. For one thing affidavit is evidence which sets out how the applicant intends to establish the justification of the remedy he seeks from the court. The affidavit also provides evidentiary proof of what it contains. So that an application by chamber summons supported by affidavit gives two important opportunities to the respondent: notice of the remedy which the applicant seeks and the course the applicant shall take in establishing his justification for the remedy. Unless there is something like an emergency, therefore, the court the court will not lightly abandon the procedure and practice which have been tested by time and which are well founded. In this regard, an oral application may be allowed to proceed in very rare and non-contentions litigation; or where it is necessary to take prompt action for the purpose of safeguarding the interests of the parties, especially immediately after the judgment is pronounced. The purpose of such an application, therefore, should be designed to maintain the status quo such as during intermediate periods between execution of decree and hearing of an appeal against such a decree; to prevent prejudice to the applicant and to prevent one party from outwitting the opposite party by maintaining a fair balance between them.”

I, respectfully, subscribe to that observation.

This prayer for staying the sentence is declined.



That aside, the application for leave succeeds and leave is granted to the applicant to file an application to this court for prerogative order of certiorari.

The application shall be filed in accordance with rule 8 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN No. 324 of 2014 published on 5th September, 2014



A handwritten signature in black ink, appearing to read "W. P. Dyansobera".

W. P. Dyansobera

JUDGE

18.5.2018

Ruling delivered at Dar es Salaam this 18th day of May, 2018 in the presence of Mr. Emmanuel Augustine assisted by Mr. David Hongoela, learned counsel for the applicant.



A handwritten signature in black ink, appearing to read "W. P. Dyansobera".

W. P. Dyansobera

JUDGE

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