

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

MISCELLANEOUS CAUSE NO. 51 OF 2020

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

AND

**IN THE MATTER OF DISMISSAL FROM EMPLOYMENT
OF KEVIN PETER MAKARANGA**

BETWEEN

KEVIN PETER MAKARANGA APPLICANT

AND

- 1. THE POLICE FORCE, IMMIGRATION AND
PRISON SERVICE COMMISSION 1ST RESPONDENT**
- 2. THE PERMANENT SECRETARY
MINISTRY OF HOME AFFAIRS 2ND RESPONDENT**
- 3. THE ATTORNEY GENERAL 3RD RESPONDENT**

Date of Last Oder: 11/12/2020

Date of Ruling: 09/02/2021

RULING

FELESHI, J.K.:

This ruling emanates from an application made pursuant to Rule 5(1), (2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 for orders:

- a. "An order for Certiorari quashing:

- i. Whole proceedings, judgment and findings dated 30th July, 2018 for being tainted with serious illegalities both of procedure and decision, for being very unreasonable that no reasonable authority could have reached the decision, for lack of reasons by both not taking into account matters which ought to have been taken into account and in taking into account matters which ought not to have been taken into account.
 - ii. Letters dated 6th July, 2019 and 14th April, 2020 by the 1st respondent as while the former is a decision reached by the 1st respondent terminating the applicant from her (sic) employment without any jurisdiction to exercise such powers, the latter is a letter upholding the former.
- b. An order of mandamus compelling the 2nd respondent to reinstate the applicant as the decision of his dismissal from employment was in total violation of the principles of natural justice and lack of jurisdiction of the 1st respondent.
 - c. Costs of this application.
 - d. Any other relief which the Court shall deem fit to grant in favour of the applicant.”

In his statement, the applicant alleged that the 1st respondent lacked jurisdiction in terminating him as such powers are exercisable solely by the 2nd respondent upon recommendations by the Inspector General of Police with an appeal to the 1st respondent upon grievances. Besides, the 1st respondent is alleged to have acted in violation of the principles of natural justice for the applicant was neither issued with notice of hearing nor accorded opportunity to examine the documentary evidence.

The applicant further stated in his statement of facts that, the decision did not state the offences and reasons in arriving at the reached decision with the Military Tribunal basing its decision on different pieces of evidence, that is, on matters which were not adduced by the parties.

In his supporting affidavit, the applicant deposed that, on 6th July, 2019, he was terminated from employment by the 1st respondent whereas prior to the said termination, he was charged with three offences whereas hearing commenced on 15th February, 2018 with the findings forwarded to the Inspector General of Police for punishment. Vide a letter served to the applicant on 6th July, 2019, the applicant was informed of his termination with advice to prefer an appeal to the 1st respondent whereas upon

pursuing the same, he was informed vide a letter authored by the 1st respondent dated 14/04/2020 that she could not entertain the appeal as it was the same body/organ that entered the same verdict. It was from the above irregularities the applicant preferred this application.

In response by Counter Affidavit, Mr. Nicolaus Edward Mhagama, deposed that, the applicant was as such served with the charges against him and that prior to the said termination, the applicant was accorded opportunity to be heard. Besides, the applicant was required to appeal to the Permanent Secretary Ministry of Home Affairs but he did not do so.

Hearing of the application continued by way of written submissions whereas parties complied, hence this ruling. To argue for merits of the present application, the applicant engaged services of Legal Link Attorneys while the respondents had services of Narindwa Sekimanga, learned State Attorney of the Office of the Solicitor General.

Arguing for the application, the applicant's counsel submitted that, the applicant was charged with hearing commencing on 15/02/2018 and ending on 16/03/2018 with the proceedings sent to the Inspector General of Police for sentence who further forwarded the same to the Permanent

Secretary – Home Affairs for necessary actions in terms of regulation 3(3) (a), (b), (c) and (d) of the Police Force Services Regulations, 1995.

Notably, the 1st respondent instead terminated the applicant's employment from the Tanzania Police Force. The applicant then preferred an appeal to the very 1st respondent against the decision of the 2nd respondent (sic) according to regulation 41(1) of the Police Force, Immigration and Prisons Service Commission Regulations, G.N. No. 38 of 2015 but was informed by the 1st respondent on 14/04/2020 that it could not determine the appeal as the decision was made by the 1st respondent.

It is from the above associated irregularities on procedure and the decision that the applicant has preferred the present application in remedial. According him, the above amounts to an arguable case in justification for grant of leave, also, "the same has been made within six months period of time and that the applicant has shown sufficient interest forming the requirements as held by the Court of Appeal in **Emma Bayo v. the Minister for Labour and Youths Development and 2 Others**, Civil Appeal No. 79/2012, (Arusha Registry), (Unreported).

In response, the learned State Attorney submitted that, a judicial review deals with lawfulness of a decision whereas the same does not deal with the resultant conclusions of the involved processes provided the procedures were complied with. Reference was made to the decision of the Court of Appeal in **Sanai Murumbe and Another v. Muhere Chacha**, [1990] T.L.R 54 which listed grounds due in exercising judicial review platform covering failure to take into account matters which ought to have been taken into account, taking into account matters which ought not to have been taken into account, lack or excessive jurisdiction, unreasonable conclusions, breach of rules of natural justice and illegality of procedure or decision.

The learned State Attorney argued that, the findings of the material inquiry were forwarded to the Inspector General of Police who also forwarded the same to the Permanent Secretary with his opinion for the applicant's employment to be terminated. And that, lastly, the resultant findings were reforwarded to the Commission for determination of the proposed applicant's dismissal for neither the Permanent Secretary nor the 2nd respondent had such authority or powers over officers between the ranks of Assistant Inspector to that of Assistant Commissioner thus arguing

the 1st respondent to have correctly and accordingly terminated the applicant from his employment.

Though not raised as a Preliminary Objection so properly to say, the learned State Attorney raised in his submission an issue of time limitation against the present application to the effect that the same was filed out of the prescribed time limit. He premised his contention upon argument that the contested decision was made on 06/07/2019 with the present application filed on 07/10/2020 and without leave for extension of time thus time barred as observed by the Court of Appeal in **Hezron Nyachiya v. Tanzania Union of Industrial and Commercial Workers and Organization of Tanzania Workers Union**, Civil Appeal No. 79 of 2001, (Dar es Salaam Registry), (Unreported) that the time for an application for leave for prerogative orders was declared to be six (6) months. It is from the above the State Attorney prayed for the application to be dismissed.

In rejoinder, the applicant's counsel reiterated what he submitted in chief regarding the merits of the application for leave. Regarding time limitation in filing the present application, the applicant's counsel submitted that the application was filed within the prescribed time as it emanates

from the letter dated 14/04/2020 that informed the applicant of the outcome of the appeal following the preferred appeal to the 1st respondent by the applicant. It is from the above the applicant's counsel maintained the application to be within the prescribed time limit thus urging for grant of the sought reliefs.

Having considered the Court record and the respective submissions by the learned friends, the following are the deliberations of this Court in disposal of the preferred application and raised preliminary objection as to time limitation. Since time limitation can in the first place take the application into an end, this Court finds it prudent and as such, will start with the same before probing into merits of the application.

Though true, as correctly submitted by the applicant's counsel, that the respondents' counsel ought to have a properly lodged preliminary objection before hearing the preferred present application on merit, this Court finds the applicant to have been accorded a fair opportunity to be heard on the said preliminary objection.

Now, as rightly submitted by the learned State Attorney and as per the applicant's affidavit, it is true that the decision sought to be impugned

was issued on 06/07/2019 with an appeal preferred against the said contested termination as evidenced by the findings of the Secretary to the Commission dated 14/04/2020 with its contents reading as hereunder:

“Tafadhali rejea rufaa yako yenye kichwa cha habari hapo juu pamoja na barua yako ya tarehe 10 Agosti, 2019 na barua yenye Kumb. Na. USPC 16920/12 ya tarehe 06 Julai, 2019 iliyo kufukuza kazi.

2. Ninakujulisha kuwa katika kikao Na. 02/2019/2020 kilichokaa tarehe 09 April, 2020 Tume ya Utumishi wa Jeshi la Polisi Uhamiaji na Magereza haikuweza kupitia rufaa yako kuhusu kutoridhika na adhabu uliyopewa ya kufukuzwa kazi. Tume haina mamlaka ya kusikiliza rufaa hii kwa kuwa ndiyo iliyotoa adhabu ya awali.”.

To this Court, though the Commission is said to lack jurisdiction in entertaining the leveled appeal, by finding out that the Commission lacked jurisdiction it was as such making determination of the appeal, that is, having determined the merits of the very aspect of jurisdiction.

From the above, this Court finds the Commission (whether right or wrong) to have determined the appeal hence paving way to the present application for leave to file an application for the sought prerogative

orders. As such, the time spent in coming up with such findings presupposed jurisdiction (whether yes or not), the very jurisdiction of the very appellate body or that of the original body now questioned in Court.

It thus follows that, the navigated preliminary objection on time limitation lacks merits, thus, the same is hereby overruled.

Resorting into the merits of the application, as such, it has been a constant outcry by the applicant that he was not accorded **one**, fair opportunity to be heard and **two**, that the body that blessed his termination exercised powers not within its vicinity (lacked jurisdiction) on the contested termination. The said complained of irregularities and manifested violations (regardless of their truthfulness or rather merits which are to be determined in the course of the very application for the sought for prerogative orders, if any), this Court finds the same to fall within the precepts set by the Court of Appeal in the cited case of **Sanai Murumbe and Another v. Muhere Chacha** (supra).

Furthermore, the above traversed areas for prerogative orders hinge and bring home an arguable case as set forth by the Court of Appeal in the earlier cited case of **Emma Bayo v. the Minister for Labour and**

Youths Development and 2 Others (supra) which this Court full subscribes to the same. It is from the above in a nutshell that this Court finds merits in the present application for leave to file an application for prerogative orders. Thus, the leave to file an application for prerogative orders is hereby granted. Considering the circumstances of the matter at hand, parties are ordered to shoulder for their own costs.

It is so ordered.

DATED at DAR ES SALAAM this 9th day of February, 2021




E.M. FELESHI
JAJI KIONGOZI (JK)
09/02/2021

A large, stylized handwritten signature in black ink, written over the typed name and date.

COURT:

Ruling delivered this 9th day of February, 2021 in presence of Ms Rehema Mtulya, learned State Attorney for the Respondents but, in the absence of the Applicant.




E.M. FELESHI
JAJI KIONGOZI (JK)
09/02/2021