IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC. CIVIL APPLICATION NO. 17 OF 2019

(Arising from the High Court of Tanzania at Dar es salaam in the Misc. Civil Appl. No. 44 of 2018)

OMARI BULLU .....APPLICANT

VERSUS

1.TANZANIA ELECTIC SUPPLY CO. LTD
2. MINISTER FOR LABOUR
3. ATTORNEY GENERAL.....RESPONDENTS

RULING

5/10/2021 & 8/10/2021

MASAJU, J

The Applicant, Omari Bullu, had been employed by the 1st Respondent, Tanzania Electric Supply Co. Ltd (Kondoa Branch) up to the 24th day of September, 1997 when his employment was terminated under the then The Security of Employment Act, 1964 upon disciplinary proceedings accordingly. He unsuccessfully appealed to the 2nd Respondent, The Minister for Labour, who dismissed the appeal on the 3rd day of May, 1999 reasoning that the Applicant had been found guilty of the

disciplinary offence upon his own confession in writing that he had stolen 1st Respondent's property (wire). The 2nd Respondent ordered that the Applicant be paid all his due terminal benefits.

The Applicant was aggrieved by the 2nd Respondent's Ministerial Ruling (action). He therefore sued PSRC and the 1st Respondent in the Court, Dar es salaam Registry, thus **Omari Bullu V. PSRC & TANESCO**, (HC) Civil Case No. 438 of 2000, Dar es salaam Registry. The said suit was then referred by the Court (manento JK) to the Court of Appeal for guidance or Revision altogether vide Reference to the Court of Appeal, thus **Omary Bullu (Plaintiff) V. Tanzania Electric Supply Co. Ltd & Attorney General (Defendants)** (HC) Civil Case No. 438 of 2000, Dar es salaam Registry. Then the Court of Appeal vide **Omary Bullu V Tanzania Electric Supply Co. Ltd & Attorney General** (CAT) Civil Revision No. 4 of 2008, Dar es salaam Registry on the 24th day of February, 2009 held that the purported Reference or Revision was misconceived, thereby declared incompetent and struck out. The Court of Appeal further directed that the proceedings in the Court in Civil Case No. 348 of 2000 be continued according to the law. The said suit was then dismissed by the Court (Kwariko, J) as she then was on the 15th day of October, 2014 for its not being properly before the Court. The Court reasoned that the Plaintiff (Applicant) ought not to have pursued his case under normal civil procedure law but through administrative law by applying for prerogative writs of *certiorari and or mandamus* under the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 RE 2002].

The Applicant then filed in the Court **Omari Bullu V. Tanzania Electric Supply Co. Ltd, the Attorney General & the Ministry of Labour** (HC) Misc. Civil Application No. 44 of 2018, Dar es salaam Registry for extension (enlargements) of time within which he might obtain leave to file an Application for prerogative orders of *certiorari and mandamus* against the Respondents so as to give rights to him. The said Misc. Civil Application has been made under section 17(2) of the Law Reform (Fatal Accidents and Miscellaneous provisions) Act, [Cap 310 RE 2002], section 4 of the Basic Rights and Duties Enforcement Act, 1994, Section 14 (1) of the Law of Limitation Act, 1971 and Section 95 of the Civil Procedure Code, [Cap 33 RE 2002].

The Court (Mtungi, J) as she then was, on the 19th day of October, 2018 held that the Application was incompetent before the Court for wrong enabling provision that couldn't have moved the Court. The Application was accordingly struck out. The Court then reasoned that.... *"it has been judiciary established in absence of any guiding rules, then one is to turn to the Crown Office Rules, 1906 as laid down in the case of* ***Dar es salaam Motor Transport Company Limited V. The Transport Licensing Authority of Tanganyika and another*** *(1959) EA. 403 also cited in Miscellaneous Application No. 32 of 200* ***between Hashim Jongo and others Vs The Attorney General and Tanzania Revenue Authority*** *in the High Court. (Main Registry) it was established that the relevant rules for extension of time in such cases are Rules 21 and 30 of the crown office Rules. Borrowing the above decision, it is found by the Court that according to practice and procedure obtaining in England, under the Crown*

Office Rules 1906 Rule 21 and 30 as applied through section 2(3) of the Judicature and Application of Laws Act, Cap 358 RE 2002 the courts have discretion in special circumstances, to enlarge time for filing of applications for prerogative orders".

The Applicant has therefore come to the Court, once more, for application for leave to file application for prerogative orders of *Certiorari and Mandamus* against the Respondents in the extended or enlarged time. His Chamber Summons Application, this time around, is made under Rules 21 and 30 of the Crown Office Rules of 1906 and Section 2 (3) of the Judicature and Application of Laws Act, [Cap 358 RE 2002] supported by his own Affidavit in which he depones on the background and reasons for the Application in paragraph 1-13 stating *inter alia* that he had been pursuing his rights in courts and that occasionally he had been sick, hence the delay in filing the Application. That, there was no time he had been negligent. Indeed, three copes of Discharges summary sheets issued by Kondoa Hospital on the 30th day of January, 2015, the 15th day of January, 2016 and the 19th day of April, 2017 have been annexed to the Affidavit. The copies of the Rulings and Orders made by the Courts in his pursuit of justice have also been equally annexed to his Affidavit in support of the Application.

The Respondents, jointly, contest the Application and there is a Counter Affidavit sworn by Theresia Dick Masangya, Zonal Legal Officer of the 1st Respondent's Central Zonal Office, Dodoma to that effect. In the said Counter Affidavit the Respondents take issues with the Applicant's

allegations in the Affidavit, deny them, put him to strict proof thereof and give reasons for their opposition to the Application.

When the Application was heard in the Court on the 3rd day of August, 2021 the learned counsel, Samwel Mcharo, appeared for the Applicant and argued the Application in his presence. The learned State Attorney, Ms. Neema Mwaipyana, appeared for the Respondents. The parties argued the Application for, and against the Application alongside their respective pleadings (Affidavit and Counter Affidavit) as they adopted the said Affidavit and Counter Affidavit to form part of their submissions in support of, and against the Application accordingly. The Applicant submitted, *inter alia*, that the Court is empowered to grant the Application under Rules 21 and 30 of the Crown Office Rules, 1906 read together with section 2(3) of the Judicature and Application of Laws Act, [Cap 358 RE 2002] and he so prayed the Court to grant the Application. The Respondent argued that the Court is empowered to extend the time only when the Applicant has properly moved the Court. That, the purported enabling provisions cited in the chamber summons do not apply. That, the Affidavit does not satisfy the accountability for his non applying between 1999 and 2015 when he was allegedly admitted in hospital. The Respondent prayed the Court to dismiss the Application with costs. That is all by the parties.

The independent United Republic of Tanzania has the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310] since 1968 vide Act No. 55 of 1968. The law, *inter alia,* in its part VII provides for prerogative orders of *mandamus,* prohibition and *certiorari* under sections

17-20. The Rules of the Court thereof, the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 so made by the Chief Justice came into force on the 5th day of September, 2014 vide Government Notice No. 324 of 2014. Rule 17 thereof provides that where there is any matter not provided for in the said Rules, the practice and procedure applicable to the High Court shall apply. Section 1 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 RE 2019] provides that the Act shall bind the Republic. Now that there is in place our own legal framework there was no need to go for a foreign law under section 2(3) of the Judicature and Application of Laws Act, [Cap 358 RE 2019].

That is to say, the Crown Office Rules, 1906 of England are no longer applicable in the United Republic in matters of prerogative orders. The said Rules and section 2(3) of the Judicature and Application of Laws Act, [Cap 358 RE 2019] therefore do not qualify for moving the Court in applications for leave to file application for prerogative orders of *mandamus*, prohibition or *certiorari* in the extended time. Section 19(1) (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 RE 2019] is categorical on how to move the Court. The Application is therefore incompetent for want of enabling provisions.

Pursuant to the Sections 17(1) (2) and 19(1) (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 RE 2019] read together with Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 there is strict regulation of issuance of the prerogative writs/orders of *mandamus,*

such shorter period as may be prescribed after the act or omission to which the application for leave relates.

This application was filed in the Court twenty (20) years after the act complained of by the Applicant. Such exceedingly delay for whatever reason is well above the would be reasonable time for processing the application in the extended time, if any, given the strict statutory six months or such shorter time line for application for prerogative orders in the United Republic.

Given the strict guidance on issuance of the prerogative writs/orders of *mandamus*, prohibition or *certiorari* as so provided under sections 17(1) (2) and 19(1) (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap. 310 RE 2019] read together with Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 thereof (The Rules), it is obvious that the practice and procedure envisaged in Rule 17 thereof do not include application for extension of time under the Law of Limitation Act, [Cap 89 RE 2019]. And so to that extent Rule 17 of the Rules was neither intended to be *ultra vires* nor contradictory to sections 17(1) (2) and 19 (1) (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 RE 2019] and Rule 6 of the Rules thereto. The spirit of the law in sections 43 (f) and 46 of the Law of Limitation Act, [Cap 89 Re 2019] has been neither superseded nor defeated by Rule 17 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. That is to say, the Law of Limitation Act, [Cap 89] does not apply on matters of prerogative writs/orders of *mandamus,* prohibition or *certiorari* in the United Republic.

That said, the incompetent application is hereby struck out of the Court accordingly. The parties shall bear their own costs.

GEORGE M. MASAJU

JUDGE

8/10/2021