

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**MISC. CIVIL APPLICATIO NO. 07 OF 2021**

**EVODIUS M. HENERICO.....APPLICANT**

versus

**1. CHAMA CHA WALIMU TANZANIA }  
2. DEUS GRACEWELL SEIF } .....RESPONDENTS**

**RULING**

21<sup>st</sup> Nov & 10<sup>th</sup> Dec, 2021

**S.M. RUMANYIKA, J:.**

Under a certificate of most urgency, pursuant to provisions of S. 5(1)(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions Judicial Review Procedures and Fees) Rules GN No. 324 of 2014 and Article 30(3) of the Constitution of the United Republic of Tanzania 1977 as amended, the two-fold application is for Evodius M. Henerico (the applicant) to apply **(1)** for leave against Chama Cha Walimu Tanzania & Another (the respondents) to apply for prerogative order of certiorari **(2)** for quashing the 2<sup>nd</sup> respondent's decision of suspending the applicant from membership of the National steering committee **(3)** with respect to latter of the applicant to compel the respondents to convene extra ordinary

national council meeting **(4)** to stop the respondents from executing the impugned decision till final determination of the application.

When on 21/10/2021, by way of audio teleconference the application was called on for hearing, I had to hear the parties on a competence based preliminary point of objection formally raised on 20/10/2021 by the respondent's counsel and now taken by Mr. Elias Hezron learned counsel. Having had been agreed, pursuant to court's order of 21/10/2021 and, in compliance with the scheduling order, the learned counsel argued the application by way written submissions. I heard them through mobile numbers 0752 178 572 and 0767 545 654 respectively.

Mr. Elias Hezron learned counsel in a nutshell he submitted that pursuant to provisions of Article 7.1(c) of the 1<sup>st</sup> respondent's constitution one should not have come straight to court (cases of **Abadiah Salehe v. Dodoma Wine Company Ltd** (1990) TLR 113 that the applicant should have exhausted local remedies by appealing to the Board, the premature and incompetently filed application was liable to be refused otherwise on that one the 1<sup>st</sup> respondent would be denied of opportunity to play their constitutional role much as there was remedy namely an order of

mandamus (case of **John Mwombeki Byombalirwa v. The Regional Commissioner and Another** (1986) TLR 73.

In reply, Mr. Paschal Joseph learned counsel submitted; (i) that with respect to the impugned decision whether or not the applicant had appealed therefore exhausted the local remedies it was factual therefore worth the name not a preliminary objection much as in the real sense of it Article 7(1)(c) of the constitution provided for no such remedy/appeal avenue for leaders of the applicant's level and categories also he attempted one in writing but the 1<sup>st</sup> respondent's general secretary muted.

2<sup>nd</sup>, where, like it is the case here, if at all right of appeal was there the process wasn't that speedy, effective and adequate much as the process deprived no one's right to ask for certiorari (case of **Shah Vershi & Coy. Ltd v. The Transport Licensing Board** (1971) E.A 289. The p.o is liable to be overruled with costs. Mr. Paschal Joseph learned counsel further contended.

The central issue is whether the court has jurisdiction now that in blacks and whites for that there was an appellate Board as per Art. 7(1) of the 1<sup>st</sup> respondent's constitution, the applicant had not exhausted the

process the instant cause was improperly before this court suffices the point.

Alternatively, at least it was not disputed that pursuant to letter with Ref. No. AB.54/320/08/117 of 28/6/2021, for the reason of limit of age (30) the applicant was terminated (not suspended). Without running risks of jumping into merits of the application therefore, contrary to what he pleaded the applicant wasn't actually suspended with all intents and purposes the present one was both different and improper cause of action all together. I think it needs no over emphasis that now the court take judicial notice that according to the 1<sup>st</sup> respondent's Electoral Rules of 2015 Edition contestant's age was limited to 35 years (thirty five) and the applicant did not dispute the fact that he celebrated his 35<sup>th</sup> birth day on 26/06/2021. It would have been a different scenario if the rules provided for majority age of 18 years as entry point. According to the constitution and rules the moment the applicant attained 35 years plus one he ceased to be youth. I think both common sense and logic dictated that only youths were represented by youths not by elders or any such other senior citizens. It is very unfortunate that the application was filed and admitted in the first place.

The p.o is sustained. In the upshot, the purported and in fact out of place Misc. Civil cause is dismissed with costs. It so ordered.

Right of appeal explained.



**S.M. RUMANYIKA**

**JUDGE**

**13.11.2021**

The ruling delivered under my hand and seal of the court in chambers this 10/12/2021 in the absence of the parties.



**C.TENGWA**

**DEPUTY REGISTRAR**

**10.12.2021**