

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA AT DODOMA MISC. CIVIL APPLICATION NO. 27 OF 2017 IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR THE PREROGATIVE ORDER OF CERTIORARI AND IN THE MATTER OF THE DECISION BY THE NATIONAL ASSEMBLY OF THE UNITED REPUBLIC OF TANZANIA BANNING THE FIRST AND SECOND APPLICANTS FROM ATTENDING THE REMAINING SITTINGS OF THE SEVENTH PARLIAMENTARY SESSION, AND ALL SITTINGS OF THE EIGHTH AND NINTH SESSIONS RESPECTIVELY AND IN THE MATTER OF THE DECISION BY THE SPEAKER OF THE NATIONAL ASSEMBLY OF THE UNITED REPUBLIC OF TANZANIA TO SUSPEND THE THIRD APPLICANT FROM ATTENDING SEVEN SITTINGS - OF THE SEVENTH SESSION OF THE NATIONAL ASSEMBLY. BETWEEN HON. HALIMA JAMES MDEE••..... 151 APPLICANT HON. ESTER AMOS BULA YA•..... 2N° APPLICANT HON. JOHN JOHN MNYIKA•..... JRD APPLICANT VERSUS HON. JOB YUSTINO NDUGAI, THE SPEAKER•.. 151 RESPONDENT OF THE NATIONAL ASSEMBLY OF THE UNITED REPUBLIC OF TANZANIA 1 HON. GEORGE HURUMA MKUCHIKA, 2ND RESPONDENT THE CHAIRMAN, PARLIAMENTARY POWERS, PRIVILAGES AND ETHICS COMMITTEE THE ATTORNEY GENERAL JRD RESPONDENT Date of Submission- 5/07/2017 Date of Ruling - 10/07/2017

RULING

H. H. KALOMBOLA,J.: By way of Chamber Summons supported by a joint affidavit of the applicants HALIMA JAMES MDEE, ESTER AMOS BULA YA and JOHN JOHN MNYIKA have brought an application under provisions of Section 18(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 RE 2002] and Rule 5 (1) and 5 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. Applicants are seeking leave of this court to file an application for certiorari to quash and set aside the decision of the speaker of the National Assembly of the United Republic of Tanzania to suspend the 3rd Applicant for seven sittings of the Seventh Session of the National Assembly , and the decision of the National Assembly banning both the 1st and 2nd 2 Applicants from attending the remaining sittings of the Seventh Session, and all sittings of the Eighth and Ninth Sessions of the National Assembly respectively. The remaining two prayers are for the costs and any other Order or Orders that this Honorable Court may deem just and equitable to grant. When respondents were given their right to file counter Affidavit, they did so with a Notice of

Preliminary Objections on the following grounds:-

1. That the Application is incompetent and bad in Law for failure to cite enabling provisions.
2. That the Application is bad in Law for contravening provisions of the constitution of the United Republic of Tanzania, 1997 [Cap 2 R.E. 2002] and Parliamentary Immunities, Powers and Privilege Act, [Cap 296 R.E. 2002r
3. That, the Application is incompetent and bad in Law as Applicants have not exhausted available remedies as provided under Order 5 (4) of the Parliamentary Standing Order, 2016.
4. That the Application is incompetent and bad in Law as the joint Affidavit in support of Application:-
 - (i) Contravenes S. 21 of the Parliament Immunities, Powers and Privileges Act. (ii) Contains Legal Arguments. 3
5. The application is bad in Law as it contains issues of constitutionality of Parliamentary Standing Orders, 2016 in this Application for Judicial Review. In the course of hearing the preliminary objections raised, Mr. Mwipopo Principal State Attorney submitted on the 1st point that Section 18 (1) which is cited by the applications as enabling provision, does not confer to this court powers/ jurisdiction to determine the present application as it is meant to require the Attorney General to be joined in the application or rather to require the Attorney General appear as a party to such proceedings. And on the Rules cited the same do not confer power to this court to determine the Application. Cementing the argument, they made reference to the decision in Misc. Civil Application No. 15/2017 between GODFREY SABATO JOHN WASONGA (Applicant} and TANGANYIKA LAW SOCIETY (1st respondent) and ATTORNEY GENERAL (2nd respondent) (HC. DODOMA unreported); and the decision of the Court of Appeal in CHINA HENAN INTERNATIONAL CO- OPERATION GROUP YRS SAL V AND K. A. RWE GASIRA 2006 TLR at page 20, wherein the Court of Appeal said wrong citation renders application incompetent. On the contrary of this 1st point Mr. Mtobesya made reference the decision in the case between SIKIKA and DISTRICT EXECUTIVE DIRECTOR, KONDOA DISTRICT COUNCIL (1st respondent), CHAIRPERSON KONDOA DISTRICT COUNCIL (2nd respondent) and 4 ATTORNEY GENERAL (3rd respondent} Misc. Civil Cause No. 1/2015 (High Court Dodoma- unreported} as well the case between TANGANYIKA LAW SOCIETY (Applicant} and THE ATTORNEY GENERAL, Misc. Civil Cause No. 31 /2014 (Dar- es- Salaam Main Registry at Dar- es- Salaam - unreported] and say these cases show the importance of applying Section 18 in application like this one. It is thus their submission Section 18 (1} is important at stage of Leave hence this is an enabling provision of Law to move the Court decide if it may allow applicants to persue the present application or otherwise. In regard to Rule 5 (1} and (2) it is submitted since there is no clear provision of Law provided, they are correct to cite the Regulations so as to show this court has inherent powers to determine the application at hand. -They, 1n the premises found the

objection devoid of merits. As in respect of the 2nd point the respondents submitted Articles 100 (1) and 89(1) of the Constitution of the United Republic of Tanzania stipulate that Freedom of Expression shall be set in Parliamentary Rules, hence enactment of the Parliamentary Immunities, Powers and Privileges Act, Cap 296. In this regard it is submitted as per Section 39 of this Act, Speaker or any Parliament Officer cannot be taken before Court of Law while acting like in the present situation (referring to paragraph (a) of this application}. (That the applicants are challenging punishment imposed to them whereas the Parliament acted 5 under rules 71 (3) (4) and , 72,73,74, and 75 of KAN UNI ZA KUDUMU ZA BUNGE, 2016). It is submitted the Parliament acted under Section 26 of Cap 296 therefore the procedure was followed. At the same time Article 100 (1) of the Constitution prohibits anybody to go to Court, hence this Court lacks jurisdiction to grant leave to the applicants. In the premises they made reference to the case of AUGUSTINO LYATONGA MREMA YRS ATTORNEY GENERAL,

- [1999] T.L.R, 206. In this case the High Court found it had no power to determine the petition. They insist the present application cannot be granted as it was a decision made by the parliament. In response, applicants' Counsel submitted, Article 100 (1) of the Constitution must be read together with Article 100(2). They admitted immunity is there but should be applied bonafidely, hence immunity is not absolute, it can be challenged, like it was in the case of LEGAL AND HUMAN RIGHTS CENTRE, TANGANYIKA LAW SOCIETY YRS HON. MIZENGO PINDA and
- ATTORNEY GENERAL,. M1sc. Civil -Cause No. 24/2013. It is thus their submission it is not correct to say everything decided in the assembly has immunity. That there are only two corners i.e Freedom of Speech and Freedom of Debate which have been put under immunity. It is their submission what applicants herein question does not fall under Article 100 (1) of the Constitution with regard to freedom of speech and freedom of debate to bring it into play. 6 They submitted so because the assembly acted as a quasi-judicial body so it had no immunity. In the circumstance it can be challenged so as to see if it acted within its powers (the reference is made in a book Administrative Law in Tanzania, by Chipeta,J.). Since the applicants' complaint is on matters of Natural Justice that procedure was not followed, this court has power to intervene as it was decided by the Court of Appeal in the case of ATTORNEY GENERAL VRS AMAN WAUD KABOUROU
- [1996] T. L. R 156 where in this case the Court of Appeal said the Court can intervene where there is an issue of unconstitutionality (see Article 26 (1) 107A and Article 4 (1) of the Constitution). Submitting on Section 38 of Cap 296, they said it actually prohibits any act done by Speaker or any Officer of the Assembly to be discussed elsewhere, but this Section does not prohibit Court intervene decision made by a quasi-judicial body. As to the present case, since by that time the assembly gave a decision as a quasi-judicial body, then this Court has powers to intervene. And the case of AUGUSTINO MREMA (supra) is distinguishable to the present application, whereas the applicants herein appears by way of Judicial Review, Augustina Mrema approached the Court by way of a petition. They pray

the preliminary objection be dismissed. As on the 3rd point it is the Respondents' submission that the applicants in particular the 3rd respondent did not exhaust provided remedies. That the 3rd applicant still had opportunity to go back and appeal against Speaker's decision to Parliament Secretary, after which the Speaker would call Rules Committee to sit and deliberate on the complaint in absence of the Speaker. As on the 2nd and 1st applicants, although they challenge committee's decision, their status differ from that of the 3rd applicant. Applicants response on the 3rd point is that 3rd applicant had no remedy available because he was ordered to vacate the assembly until after (7) seven days. Therefore Kanuni ya 5

- (2) and (4) ya Kanuni za Kudumu za Bunge must be read together so as to determine the situation which faced 3rd applicant. Without reading the Kanuni ya 5 in whole, it is a misconception for the Respondents who submitted that the 3rd applicant did not exhaust remedies available. Going by wording _of_ _Kan uni_ 5_ (4),-it- means- -different- -cause - may-be- -taken,- - - therefore 3rd applicant had option to take an action like this one. In the premises they pray this point be dismissed with costs. The respondents submitted on the 4th point of objection that the joint affidavit contravenes Section 21 of the Parliamentary Immunities, Powers and Privileges Act as Section 21 (1) prohibits a member of a parliament or any other officer who records proceedings to give evidence elsewhere in respect of the record without the leave of the Assembly. It is their submission applicants joint affidavit stated about what transpired in the assembly i.e paras 17, 19,20,21,22, 23, 24, 25, 28, 30, 31, 32, and 33. At paragraph 38, they annexed assembly documents 8 as part of their affidavit while they did not obtain assembly's permission. The documents are A 1, A2, A3 and A4. On a last limb it is their submission the joint affidavit contains legal arguments which act is contrary to Order XIX Rule 3 (1) of the Civil Procedure Code (see paras 10, 12, 13, 20, 22, 26, 27, 29, 32, 37, 39, 40, and 43). On this omission it is submitted the affidavit is incompetent thus leaving the Chamber Application unsupported as it was found in case of FEM CONSTRUCTION LIMITED VRS NKULEKO KALANJA, Civil Appeal No. 168/2005 HC Dar- es- Salaam (unreported) whereby the High Court found the affidavit incompetent for containing extraneous matters and it struck out the application. As well in Civil References No. 15 of 2001 and 3 of 2002 between PHANTOM MODERN TRANSPORT (1985) LIMITED VRS D. T. DOBIE (TANZANIA) LIMITED, where Court of Appeal ruled, affidavit should not contain arguments, they in the premises pray the Court declare the affidavit incompetent and the application be struck out. In respect of this 4th objection the applicants referred this court to MUKISA BISCUITS' Case and say this preliminary objection touches matters of evidence as the respondents said applicants ought to have sought leave in order to use the documents. On top of it they cited the case of TANGANYIKA LAW SOCIETY VRS ATTORNEY GENERAL, Miscellaneous Civil Cause No. 31 /2014 and say preliminary objection has been brought prematurely as evidence is required so as to determine whether the applicants obtained leave or not. Since stage of hearing has 9 . not been reached applicants still have time to seek for leave. It is their submission objection under 4 (i) is prematurely brought and in all it is not a preliminary objection. As ,n respect of preliminary objection under 4(ii), it is

their submission the respective Rules were not contravened. They submitted under paragraph 10 of the affidavit that procedure was not followed, paragraph 13 is a statement, it is on procedure, same applies to paragraphs 20, 22, and 26 where the applicants stated how the procedures were not followed. Paragraph 27 is only elaborative, they are not argumentative. It is thus submitted in event the court finds those paragraphs to be argumentative the recourse is for court to expunge or overlook them and move forward with other paragraphs. On this point it was noted even the Learned State Attorney did not mention how the said paragraphs are offensive. Lastly on the 5th point of preliminary objection, respondents found the application is incompetent as it contains issues of constitutionality whereas the application before this court is for Judicial Review. The applicants are seeking for leave to apply for the prerogative orders. But the applicants at the same time say the standing Orders are against constitution (see paragraph 6 (d) (iv) of the statement), and paragraphs 37, 39, and 40 of the joint affidavit. It is submitted if the applicants need to challenge constitutionality of the Laws they could have acted under Cap 2 of the Laws. 10 All in all, they pray this court dismisses the application with costs. About the 5th point of objection the applicants replied they did not challenge Constitutionality in paragraph 6 (d) (iv) as they stated in this paragraph that applicability of Order 74 (5) of the Parliamentary Standing Orders is not in conformity with the spirit of the constitution. It is submitted in event the court finds the statement to be offensive, the recourse according to Rule 7 (3) of the "Law of Reform" ("Fatal Accidents Miscellaneous Provisions) Judicial Review Procedure and Fees) 2014, the court can order amendment of the statement at this stage of application (Rule 7

- (3) para (a) of the Rules). On issue that paragraphs 37, 39, and 43 of the joint affidavit are offensive for stating Constitutionality of Standing Orders, it is their submission the same are not offensive as they provide factual statement. And in event the court finds them offensive, then a proper avenue is to expunge them and proceed to determine the application. All in all they find the preliminary objections raised devoid of merits, they should be dismissed with costs. Mr. Mwipopo Principle State Attorney reiterated the submission in chief that S. 18 (1) and the cited Rules do not confer jurisdiction to the court to exercise its powers, hence the 11 applicants failed to cite enabling provision in this application so it is bound to fail. As on the 2nd point it is submitted Article 100 (2) is not absolute and the case of PINDA is distinguishable to this application. That PINDA case challenged Constitutionality and the case was before Constitutional Court. That Court's powers are provided under Article 107A of the Constitution and that Article 100 (2) is relevant. Moreover the issue on 11 UTARATIBU cannot be challenged in court as court's jurisdiction has been ousted. And court has no powers even if the assembly sits and give decision as quasi-judicial body. So they pray this court to find it has no jurisdiction to entertain this application as per Section 38 of Cap 296. And MREMA'S case is relevant to this situation. About 4th point they insist 3rd applicant could have exhausted other remedies as under Order 5 (4), as it was not necessary for him to present his complaint personally, he could have done so by aid of another person. On the 5th point it is their submission evidence have been adduced 1n

affidavit, therefore this is already a case. In the premises S. 21 was contravened. They insist even if the offending paragraphs will be expunged, still the affidavit cannot stand. According to Rule 7 (4) of Rules, 2014, amendment could be ordered if notice is given but as now applicants have not given notice, they thus cannot make amendment. All in all they insist since Parliamentary Standing Orders have been challenged i.e its Constitutionality, this court cannot in the present situation intervene unless the procedure is followed. They insist the preliminary objections have merit and pray the application be dismissed with costs. What does this court say about the submissions for and against the preliminary objections raised? As regards to the 1st point of preliminary objection this court says whereas I agree with the respondents that Section 18 (1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions Act, (Cap 310) does not move this court to entertain the application at hand as its relevancy is restricted to the requirement that the Attorney General has to be joined in the application, I am of the view that its being cited does not make the application incompetent for it simply indicates the applicants have complied with the Law by bringing into play the Attorney General. -Also as Rule 5(1) and (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure and Fees) Rules, 2014 provides for the requirement of leave before applying for judicial review and the . same has been sought, this court is of the considered view that the application is properly before it. After all the respondents in their submission in support of this point have not so assisted this court by providing the relevant provision in opposition of the ones cited by the applicants. On the 2nd point of objection that the Application is bad in Law for contravening provisions of the Constitution of the United Republic of Tanzania, 1977 [Cap 2 R.E 2002] and 13 Parliamentary Immunities, Powers and Privilege Act, {[Cap 296 R. E. 2002], this court agrees with the applicants that by no means Article 100 of the Constitution of the United Republic of Tanzania, 1977 ousts the jurisdiction of this court conferred by the very Constitution under Article 108 {2} in certain situations/aspects to look into the legality of the decision of the 1st respondent during proceedings in the National Assembly in so far as Article 100 {2} of the Constitution is concerned. Pertinent to this is the case of LEAGAL AND HUMAN RIGHTS CENTRE (1 st PETITIONER) and TANGANYIKA LAW SOCIETY (2 nd RESPONDENT) Misc. Civil Cause No. 24/2013 (Main Registry at Dar -es - Salaam) whereby JUNDU ,JK, MWARIJA,J and TWAIB,J stated at page 14 of their ruling that:- "It is thus our respectful view that the constitutionality of Article 100 (2) of the Constitution can be the subject of a constitutional challenge in this court and the same can be said of Section 5 of Cap 296, which is only an Act of Parliament, it can be challenged by way of judicial review of legislative action." In the premises, it cannot be said as it was submitted by the respondents that this court totally/ absolutely lacks jurisdiction to entertain this application just because the decision was made in the parliament. I agree with the applicants who said there is only immunity over freedom of speech and freedom of debate in the National Assembly. But according to the wording of Article 100 (2) of the 14 Constitution that freedom is not absolute as they are subject to other provisions of the Constitution and other Laws. It is possible under our Law to institute proceedings challenging members of Parliament acts while in Parliament notwithstanding the immunity as Article 100 of the Constitution has

provided the principle for such challenges. Cap 296 and the Standing Orders have laid down the procedure and conditions under which remedies may be sought in pursuance of such rights. In view of the above explanation, this application has not been made in contravention of the provisions of the constitution of the United Republic of Tanzania, 1997 [Cap 2 R.E. 2002] and Parliamentary Immunities, Powers and Privilege Act, [Cap 296 R.E. 2002]. In so far as the 3rd point of objection is concerned that the applicants have not exhausted available remedies as provided under Order 5(4) of the Parliamentary Standing Order, 2016, and in particular the 3rd applicant, this court going along with the submissions of both side has the following view:- It is trite Law that in application for judicial review as the instant one, this court will not grant the remedies sought until the party applying for has exhausted statutory remedy before resorting the judicial process. It was held in *PARIN A.A. JAFFER and ANOTHER YRS ABDURASUL AHMED JAFFER and TWO OTHERS* [1996] TRL 110 at page 116, whereby the court said:- "... where the Law provides extra-judicial machinery alongside a judicial one for resolving a certain cause, the extra judicial machinery should, in general, be exhausted before recourse is made to the judicial process." I find the stance above as being good Law and adopt it. The 3rd applicant in the instant application had the right to challenge the decision by the 1st respondent under Order 5

- (4) of the Parliamentary Standing Orders, 2016 which provides:- 5(4) "Mbunge yeyote ambaye hataridhika no uamuzi wa Spika anaweza kuwasilisha sababu za kutoridhika kwake kwa Katibu wa Bunge ambaye atawasi/isha malalamiko hayo kwa Spika. In this regard the 3rd applicant was supposed to lodge his complaint or misgiving to the Secretary of the National Assembly who would present the same to the Speaker. Therefore the 3rd applicant ought to have complied with that requirement first if was aggrieved. And the procedure is very clear and which cannot raise doubt, it is fair as a complaint registered against the decision of the Speaker shall be determined by a committee of which the Speaker and his deputy will not be part. Members will be temporarily elected as per Rule 5 (6) of Kanuni which reads:- 5(6) "Spika au Naibu Spika hatakuwa Mwenyekiti wa Kamati ya Kanuni za Bunge inapokaa kujadili uamuzi uliolalamikiwa, bali Wajumbe watachagua Mwenyekiti wa muda kwa asilimia 50 ya kura za siri." 16 With the above view, it is a finding of this court that the 3rd point of objection has merit as the 3rd applicant cannot be heard arguing that since he was ordered to go outside the National Assembly gate he did not have any other way to present his grievances as still he could have done so by writing. In respect of the 4th point of objection, on (i) part, it is argued the applicants in annexing to their joint affidavit annexures A 1, A2, A3 and A4 and in stating in paragraphs 17, 19, 20, 22, 24, 25, 27, 28, 30, 31, 32 and 33 contravened Section 21 of the Parliamentary Immunities, Powers and Privileges Act as in so doing disclosed what transpired in the National Assembly, let me cite the Section which is as follows:- 21 (1) "Notwithstanding the provisions of any other Law - no member or Officer of the Assembly and .. no person employed to take minutes of evidence before the Assembly or any Committee shall, save as provided in this Act, give evidence elsewhere in respect of the contents of any document laid before the Assembly or such Committee, as the case may be, or in respect of any proceedings or examination held

before the Assembly or such committee, as the case may be, without the special leave of the Assembly first had and obtained." 17 It is the view of this court having gone through the wording of Section 21 {l) quoted hereinabove, it is very clear leave must be sought before one like the applicants herein take the minutes (as per the annexures herein) before this court. The word " SHALL" has been applied in this Section therefore this court finds objection at hand 4(i) has merit, the applicants submission in this respect lacks merit. In respect of objection 4(ii) that the joint affidavit contains legal arguments mentioning the 10th , 12th, 13th, 20th, 22nd, 26th, 27th, 29 th , 32nd , 37 th , 39 th , 40th , and 43 rd paragraphs. On the other hand applicants opposed mentioning 10th paragraph as only indicating procedure was not followed, 13th paragraph is a statement on procedure so as 20 th , 22nd and 26 th paragraphs. The counsel said 27 th paragraph is only elaborative. He insisted there are no legal arguments. Going by 12th paragraph it is stated "3 rd Applicant did not commit any act or make any statement contemptuous of Lawful authority ... " In the 13th paragraph it is stated, "1 st Respondent acts as against the third Applicant ... in any case ultra vires the Parliamentary Standing Orders." In the 22 nd paragraph it is stated " ... 1st Respondent did not allege that the second Applicant had committed any offence ... " In the 26 th paragraph it is stated 11 ... there is no such offence as kutangatanga ukumbini ... " In the 27 th paragraph it is stated " ... the 1st Applicant, even though she was not charged with the offence of contempt ... " By mentioning those paragraphs among others, there is nothing that can be said other than saying that it is true the joint affidavit contain legal arguments. In this view I find the whole of the 4th point of objection meritorious. I do not see why I should be detained by this point .any further. In regard to the .5th point of objection and while I am aware of the submissions from both sides, it has been noted by this court that in their joint affidavit the applicants have deposed Constitutional grievances in some of the paragraphs for example paragraphs 39 and 43 thereof. These paragraphs State as hereunder shown:- Para 39- "That, the application raises matters of fundamental Constitutional and legal importance namely, whether the power of the National Assembly and/or the Speaker to punish its members is unlimited, and 19 whether this Court's powers of Judicial Review do not extend to decisions of the Legislature when exercising its quasi-judicial functions under the Constitution and the Standing Orders." Para 43- "That, if the leave sought is not granted this court shall be precluded from pronouncing on the pertinent constitution and legal issues raised by this application namely whether the powers of the National Assembly sitting in its quasi- judicial capacity and whether this Court's powers of judicial review do not extend to the Legislature exercising its quasi-judicial functions . " So, if the application at hand is considered with the inclusion of the quoted paragraphs it would imply that besides the ap~lication f0r review, the applicants have_ also move_d this court under Article 30 (3) of the Constitution to look into the Constitutionality of the powers of the Speaker vested in him by Law. Whereas I agree that the applicants can challenge on the Constitutionality of the powers of the Speaker in certain circumstances, it is the view of this court that the applicants ought to have done so by bringing a Constitution Petition challenging the Constitutionallty or otherwise of powers thereof. Applicants can not do so in the instant application for judicial review, as this court should then sit as a Constitutional Court and not

like in the present court. In the case of MTIKILA VRS ATTORNEY GENERAL [1995] TLR 31, Lugakingira, J. held that:- 20 11 Courts are not authorized to make disembodied pronouncements on serious and cloudy issues of Constitutional policy without battle lines being properly drawn." This Court in the premises finds the position in MTIKILA (Supra) as being attractive and adopt the same as good Law, as the Constitution gives an individual like the applicants herein right to take a matter to the High Court if they feel their basic rights have been contravened . In the circumstance they should move the court to sit as a Constitutional Court and not otherwise. In view of what has been stated in the 3rd point of objection and the 5th point of objection I am satisfied that the 3rd applicant had still to exhaust available remedies at the National Assembly. As -on the 5th point of objection, I am as well satisfied the applicants herein filed a joint affidavit which included issue of Constitution as 1n respect of Cap 296. Since they went further to mention the Section and ask this Court to declare the same unconstitutional, it goes without saying they seek this Court to deliberate on Constitutionality of the Sections they mentioned in Cap 296. Had it not been so, their prayer to expunge the offending paragraphs would have been attended. Nevertheless it is not the duty of this Court to make a choice for the applicants on what to file in court. Since they filed the joint affidavit as it is, it means they were certain in their minds that what they filed was according to their intention. It is not 21 practicable to act on the application for leave at the same time to act on Constitutional matters, because as a normal High Court it is presided over by a single judge and a Constitutional Court is presided over by more than one Judge. Along side with the above explanation, statements and paragraphs which are in respect of unconstitutionality of the mentioned sections cannot be taken supporting the present application since they are disclosing facts which are different from what is prayed in the application, hence the application is left with no legs to stand on. Up to this juncture it is worth saying the 3rd , 4th and 5th points of objection dispose the matter. It is for the reasons as stated hereinabove the application cannot be entertained by this court even if the offending 13aragrapt""ls would be ordered expunged. In the circumstance the application at hand is dismissed with costs. It is so ordered. ~l (H. H. KALOMBOLA) JUDGE 10/07/2017 22 COURT Right of Appeal open. 1U1 (H. H. KALOMBOLA) JUDGE 10/07/2017 DATE: 10/7/2017 Coram: Hon. Madam H. H. Kalombola, J. 1st Applicant: 2nd Applicant: } Mr. Kalonga adv- Present 3rd Applicant: 1st Respondent: 2nd Respondent: Mr. Angaza Mwipopo, Principal State Attorney 3rd Respondent Present. C/~_: ljinjL COURT: Ruling read today 10th July, 2017 in the presence of Mr. Kalonga for the Applicants and Mr. Angaza Mwipopo, Principal State Attorney for the Respondents. 23 -- JJ!II, I I- I - 1.-•J• _ • m (H. H. KALOMBOLA) JUDGE 10/07/2017 Right of Appeal explained. m (H. H. KALOMBOLA) JUDGE 10/07/2017 24

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