

TANZANIA / JUDGMENT

MISC CAUSE NO 16679 OF 2024

ATHUMAN MSAFIRI KITANGA V

COURT
TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB
REGISTRY AT DAR ES SALAAM MISC. CIVIL APPLICATION NO. 16679 OF 2024

IN THE MATTER OF AN APPLICATION FOR ORDERS FOR MANDAMUS AND CERTIORARI AND
IN THE MATTER OF THE DECISION OF THE CHAIRPERSON OF THE INVESTIGATION TEAM
BETWEEN ATHUMAN MSAFIRI KITANGA.....APPLICANT AND THE
GOVERNING BOARD OF THE COLLEGE OF THE BUSINESS EDUCATION (CBE - DAR ES SALAAM
COLLEGE)1ST RESPONDENT THE HON. ATTORNEY GENERAL.....2ND
RESPONDENT

RULING

Date of last Order: 25th February 2025 Date of Ruling: 5th March 2025 MTEMBWA, J.: As
discerned from the pleadings, the Applicant is a former master's student of the 1st Respondent
College. Under rule 8 (1) (a),

- (b) and (2) and (3) of the Law Reform (Fatal Accidents and 1 Miscellaneous Provisions) (Judicial
Review Procedure and Fees) Rules, 2014, he has preferred this Application seeking for a
prerogative order of certiorari against the decision of the 1st Respondent made on the 27th
February 2024 refusing to grant him the academic transcript and certificate after having
successfully passed all of the examinations in his master's Degree in Information
Technology in Project Management. The Application has been supported by an affidavit
affirmed by the Applicant. When the Application was served upon the Respondents, a
preliminary objection was raised that the application for judicial review before this Court is
incompetent as it purportedly contravenes rule 8
- (1) (a) of the Rules. When the matter came for orders on 18th September 2024, the Applicant
was represented by Mr. Faraj Ahmed, the learned counsel, while Mr. Ambokile Mwakaje, the
learned principal state attorney, represented the Respondents. By consent, the parties
agreed to argue the preliminary by way of written

submissions.

The basis of the preliminary objection is that when the Applicant filed the Application for leave to file prerogative orders, only two 2 prerogative orders, namely mandamus and certiorari, were pleaded. Based on the Application, this Court granted leave as sought. However, when the Application for prerogative orders was filed, only one prerogative order of certiorari was pleaded in the Chamber Summons in blatant contravention of the Rule 8 (1) (a) of the Rules. Based on that, the learned state attorney implored this Court to strike out the Application. On his part, the learned counsel for the Applicant found the objection not worth purchasing. While conceding to the very fact that mandamus has not been pleaded in the chamber summons, the learned counsel observed that such omission did not offend rule 8 (1)

- (a) of the Rules. He distinguished all cases cited by the learned state attorney for Respondents. Indeed, rule 8 (1) (a) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 provides that where a leave to apply for judicial review has been granted, the application shall be made by way of chamber summons supported by an affidavit and the statement in respect of which leave was granted. The strict 3 interpretation of the cited law dictates that the Applicant must plead only the prerogative orders sought and granted when he applied for leave. Any new prerogative order not pleaded when leave was sought cannot be entertained when the Application is determined. There is no dispute that only two prerogative orders, namely mandamus and certiorari, were applied for when the Applicant applied for leave in Miscellaneous Cause No. 8669 of 2024. When this Application was filed, only certiorari was pleaded in the chamber summons. The learned state attorney considered the omission to plead mandamus fatal and contravened rule 8 (1) (a) of the Rules. With respect to the learned state attorney, such interpretation is manifestly wrong. When leave to file prerogative orders is granted, a party is at liberty to abandon some of the orders in respect of which leave was granted. What is strictly barred is the filing of the Application with additional prerogative orders that were not pleaded when leave was granted. With these few remarks, I agree with the learned counsel for the Applicant that the preliminary objection has been raised out of 4 context. The learned state attorney appears to have misapprehended the provisions of rule 8 (1) (a) of Rules. That said, the preliminary objection raised by the state attorney is hereby overruled. Considering the circumstances, there will be no order as to costs. I order accordingly. Right of appeal explained. DATED at DAR ES SALAAM this 5th March 2025. H.S. MTEMBWA
JUDGE 5

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