

TANZANIA / JUDGMENT

RULING BALTAZARY BOSCO MAHAI VS TLS AND A

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (MAIN REGISTRY) AT DODOMA
MISC. CIVIL CAUSE NO. 7969 OF 2024 IN THE MATTER OF APPLICATION FOR PREROGATIVE
ORDERS OF CERTIORARI AND MANDAMUS AND IN THE MATTER OF THE LAW REFORM
(FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) ACT, [CAP 310 R.E 2019] AND IN THE
MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS)
(JUDICIAL REVIEW PROCEDURE AND FEES) RULES, G.N NO. 332 OF 2014 AND IN THE MATTER
OF THE TANGANYIKA LAW SOCIETY ACT [CAP 307 R.E 2002] AND IN THE MATTER OF
TANGANYIKA LAW SOCIETY (MEETINGS) REGULATIONS, G.N NO. 523 OF 2020 AND IN THE
MATTER OF AN APPLICATION TO CHALLENGE THE DECISION OF THE TANGANYIKA LAW
SOCIETY THROUGH ITS GOVERNING COUNCIL FOR CALLING EXTRA ORDINARY GENERAL
MEETING WHICH WAS INTENDED TO BE HELD ON 16th DECEMBER, 2023 FOR BEING
UNREASONABLE, ILLEGAL AND TAINTED WITH PROCEDURAL IMPROPRIETY BETWEEN
BALTAZARY BOSCO MAHAI.....APPLICANT AND TANGANYIKA
LAW SOCIETY..... 1st RESPONDENT THE ATTORNEY
GENERAL.....2nd RESPONDENT 1

RULING

28hJune & 15 hJuly, 2024 KAGOMBA, J. The applicant herein filed his chamber application under Section 17(2), 18(1) and section 19 of the Law Reform (Fatal Accidents and Misc. Provisions) Act, 2014 [Cap 310 R.E 2019] and Rule 8(1) (a) & (b) and rule 8(2) of the Law Reform (Fatal Accidents and Miscellaneous provisions) (Judicial review Procedure and Fees) Rules, 2014 (Henceforth "GN No. 324 of 2014") seeking the following court reliefs: -

- (a) an order for certiorari to call for, quash and set aside the decision by the Tanganyika Law Society dated 1st December, 2023 through its Governing Council calling for an Extra Ordinary General Meeting (Henceforth "EGM") for being unreasonable, illegal, irrational and tainted with procedural impropriety for failure to follow the law.
- (b) an order for Mandamus to compel the 1st respondent to convene the said EGM in compliance with the law.

- (c) costs of the application be borne by the respondents
- (d) any other Orders as this Court may deem fit and just to grant. 2 The application is supported by an affidavit sworn by the applicant, statement of facts and his reply to counter affidavit of the 1st respondent. The application is opposed by the 1st respondent vide her counter affidavit. A brief background to this application is as follows: On 1st December, 2023, the respondent informed its members that its Governing Council had issued a notice calling for an EGM on 16th December, 2023. The applicant who, identifies himself to be an active member of the respondent, is unhappy with the manner the said meeting was being convened. He is of the view that such a notice and the decision to call the said meeting, did not observe proper procedures. He, therefore, sought and obtained leave to apply for the above - stated orders through judicial review. On the date of hearing, Ms. Josephine Mzava Paulo, learned Counsel appeared for the 1st respondent. The 2nd respondent was represented by Mr. Edwin Joshua Webiro, learned State Attorney while the applicant fended for himself. In his oral submission in chief, the applicant prayed to adopt his affidavit, statement and affidavit in reply to the counter affidavit of the 1st respondent. And, while in his Statement the applicant raised five grounds upon which the reliefs stated above are sought, at the hearing he preferred to argue only on three grounds, as follows: 3 Firstly; that the notice calling the EGM was very short contrary to time limit of 21 days provided for under regulation 10(2) of the Tanganyika Law Society (Meeting) Regulations, GN. No 523 of 2020 (Henceforth "TLS Meetings Regulations"). Referring to annexure BBM-1 to his own affidavit, the applicant contended that the notice for the EGM was issued on 1st December, 2023, while the meeting was to be conducted on 16th December, 2023 being a space of only 15 days instead of 21 days stipulated by under the above cited Regulation. He added that, the calling of the meeting at a short notice could have affected his participation in the affairs of the 1st respondent. Secondly; that the 1st respondent did not timely circulate to its members the documents of the meeting, in contravention of regulation 11(1) and (2) of the TLS Meetings Regulations which requires such documents to be circulated to members within 14 days prior to the meeting. He lamented that the said non-compliance with the law could have affected his right to participate in the affairs of the 1st respondent. Thirdly; that the notice of the meeting (Annexure BBM-2 to applicant's affidavit), that was issued to members, was signed by the President of the 1st respondent instead of its Executive Director. He clarified that the cited regulation requires that the notice be signed by the Head of the Secretariat 4 of the 1st respondent who, according to Regulation 10(1) of the TLS Meeting Regulations, is the Executive Director. He lamented that the President of the 1st respondent assumed authority not conferred to him by the law. In addition to those grounds, the applicant intimated to the Court that the 1st respondent did not file her Statement in reply, as required by Rule 13 of GN No. 324 of 2014 which requires the reply to the application for judicial review to be by way of a counter affidavit and statement in reply. Hence, in his view, the grounds in the applicant's Statement stand undisputed. Having so submitted, the applicant prayed for the Court to issue an order of certiorari to call for, quash and set aside the aforesaid decision of the 1st respondent dated 1st December, 2023 through its governing

council, calling for the EGM, for being unreasonable, illegal, irrational and tainted with procedural impropriety for failure to follow the law. As regard the prayer for an order of mandamus, the applicant submitted that owing to the reason that the impugned meeting was scheduled for 16th December, 2023 and since the scheduled time has already lapsed, the 1st respondent be compelled to follow the law and procedure, if he wished to conduct the said meeting. 5 Lastly, he prayed for the costs to be borne by the 1st respondent, and for the Court to issue any other reliefs or order it may deem fit and just to grant to the applicant. Replying to the above submission, Ms. Paul, Counsel for the 1st respondent firstly prayed to adopt the counter affidavit of her client to form part of her submission. Her first contention is that the calling of Extraordinary General Meeting under Regulation 5 of TLS Meetings Regulations, is done whenever it is deemed necessary or expedient. She clarified that according to annexure BBM-1 and TLS "A" to affidavit and counter affidavit respectively, there were issues which necessitated the convening of the EGM on 16th December, 2023, for which the Governing Council of the 1st respondent used its discretion under section 21(2) of the Tanganyika Law Society Act [Cap 307] as amended by the Written Laws (Misc. Amendments) Act No. 1 of 2020, (Henceforth "TLS Act"), the first prayer in the chamber summons which seeks an order of certiorari to quash this decision for being unreasonable, cannot stand for there being reasons for calling the meeting. The learned Counsel for the 1st respondent also replied that the impugned decision cannot be said to be illegal, or irrational or tainted with 6 procedural impropriety for failure to follow the law, because, the meeting was legal as per regulation 5, and section 21(2) of the TLS Act which allows the calling of such a meeting. On the second prayer, seeking for an order of mandamus to compel the 1st respondent to call EGM in compliance with the law, if she wished to, the learned Counsel objected to the prayer for being new. She clarified that the same is not in the chamber summons. Adding that, in her view, the applicant admits that the application has been overtaken by events. As regards the prayer for costs, the learned Counsel replied that it was not the intention of the 1st respondent to cause costs to anybody as the EGM was called for the interest of the Society. She prayed the Court to consider the fact that the said EGM was not held after the order of this Court in Miscellaneous Civil Cause No. 27673 of 2023. Replying for the 2nd respondent, Mr. Edwin Joshua Webiro, learned State Attorney started by addressing the Court on the purpose of judicial review. He cited the decision of this Court in the case of Felix Mselle Vs. Minister for Labour and Youths & Another [2002] T.L.R 437 where Kyando, J., (as he then was) observed as follows: 7 "Judicial review of administrative actions is the power or process by which the High Court exercises its supervisory jurisdiction over proceedings and decisions of inferior tribunals or other authorities, bodies or persons charged with the performance of the public acts and duties. This power is not statutory but inherent in the High Court". Basing on the above decision, Mr. Webiro underscored the point that when this Court determines an application for judicial review, it exercises supervisory power or jurisdiction which is inherent in it. As regard the grounds which may warrant review of the decision of administrative body or tribunal or inferior court by the High Court, the learned State Attorney referred to another decision this Court in James Funke Gwagilo Vs. Attorney General [1994] T.L.R 73, where three grounds were

stated. He mentioned the first ground as illegality of the decision sought to be challenged, and contended that if the law was not followed at the time of making the decision, that decision will be illegal. As for the second ground for judicial review, the learned State Attorney mentioned procedural impropriety, and clarified that it is established where there is failure to observe the principles of natural justice and failure to act within procedural fairness. 8 Mr. Webiro mentioned the third ground as irrationality which involves making a decision that is outrageous, in defiance of logic or acceptable moral standards that no reasonable person who had applied his mind to it could have made such a decision. Having submitted the above grounds, the learned State Attorney supported the applicant's submission that the notice of the EGM ought to have been made 21 days prior to the meeting. He added that regulation 10(1) of TLS Meeting Regulations clearly provides that this notice is for every meeting of the members of the 1st respondent. It is Mr. Webiro's contention that since the notice was for only 15 days, the decision to call the EGM is illegal for failure to follow the law. He added that the same conclusion applies to non-compliance with regulation 11 which requires the 1st respondent to circulate the documents of the meeting within 14 days prior to the meeting. In his further submission, the learned State Attorney was at one with Ms. Paulo on her contention that Section 21(2) of TLS Act empowers the 1st respondent to convene meetings of the Society. Mr. Webiro added, however, that the cited provision does not empower the 1st respondent not to comply with regulation 10 with regard to notice period and regulation 11 on timely circulation of the documents of the meeting. In his views, much as the 1st respondent has power to convene meetings whenever needs arises, she is yet obliged to comply with regulation 10 as well as regulation 11, because regulation 10 applies to every meeting of the 1st respondent. Mr. Webiro also echoed the applicant's contention that under regulation 2 of TLS Meetings Regulations, it is the Executive Director of the 1st respondent who is the Head of the Secretariat and who is supposed to sign the notice of the EGM instead of the President of the Society. He added that even section 19(5) of TLS Act clearly provides that the Executive Director is the Chief Executive officer of the 1st respondent and who is the Head of the Secretariat. Having noted that noncompliance with rule 10 and 11 is not contested by the 1st respondent and in view of the fact that the 1st respondent did not file a Statement in reply as per rule 13 of the Law Reform (Fatal Accidents and Miscellaneous provisions) (Judicial Review Procedure and Fees) Rules, 2014, Mr. Webiro's holds the view that the 1st respondent is not contesting the reliefs as well as the grounds upon which the same are sought as per applicant's Statement. For those reasons, he beseeched the Court to issue an order of certiorari and quash the impugned decision of the 1st respondent for being illegal for failure to follow the law. 10 There being no rejoinder from the applicant, the Court finds two issues for determination. Firstly, whether the application has merit, and secondly, whether the applicant is entitled to the reliefs sought in the chamber application. From the parties' submissions, it is my view that the following facts and position of the law pertaining to this application have gone uncontested: One; the applicant herein is an active member of the 1st respondent. Two; there was a decision of the 1st respondent, through its Governing Council, to call an EGM on 30th December, 2023. Three; a notice of the said EGM was issued to

members of the 1st respondent having been signed by its President. Four; notice of every meeting of the 1st respondent shall be issued by the Secretariat pursuant to rule 10(1) of the TLS Meeting Regulations and that the Secretariat is headed by the Chief Executive of the 1st respondent as per section 21(1) of the TLS Act. Five; the notice of the impugned EGM had allowed a period shorter than 21 days from the date of its issuance to the scheduled date of the meeting. Six; there is a legal requirement under regulation 10 (1) of the TLS Meetings Regulations that a prior notice of 21 days is required for convening an EGM. Seven; there is a legal requirement under regulation 10 and 11 of the TLS Meetings Regulations that documents of the EGM shall be circulated to members of the 1st respondent within 14 11 days prior to the scheduled date of the EGM or any other meeting. Eight; the non-observance of the 21 days' notice requirement and the requirement to circulate meeting documents to members within 14days prior to the EGM would have negatively affected the applicant's participation in the affairs of the 1st respondent. Nine, there was a program showing which agenda or activities will be transacted at the said EGM but the same was not received by the applicant. With due respect to the Counsel for the 1st respondent, there are only points of effective opposition I have heard from her side. The first one is related to the Ninth fact above, that since there was a program to be pursued at the EGM that was subsequently supplied to members, the decision to convene the EGM cannot be said to be unreasonable. I agree with the learned Counsel that when a decision is done for reason, it cannot be condemned to be unreasonable. And since the applicant has not elaborated in his submission how the decision to call the EGM is unreasonable, I find no good ground to hold it so. The second point of opposition is with regard to the prayer for grant of an order of mandamus to compel the 1st respondent to convene the said EGM in compliance with the law. Since the said EGM was to be held on 16th 12 December, 2023 and that date has long gone, there is nothing the applicant could do with prayer at the moment. In his oral submission before the Court, the applicant prayed that owing to the reason that the impugned meeting was scheduled for 16th December, 2023 and since the scheduled time has already lapsed, the 1st respondent be compelled to follow the law and procedure, if he wished to conduct the said meeting. As correctly opposed by Ms. Paulo, this is a new prayer and is uncalled for since date of the EGM is already elapsed. However, on the first prayer for grant of certiorari the same is still maintainable since what is being challenged in the decision to call for the EGM. The same is impugned for being unreasonable, illegal and tainted with procedural impropriety and facts have stated to substantiate the illegality involved. Just to recap, the following facts are relevant: ONE, a notice of the said EGM was issued to members of the 1st respondent having been signed by its President instead of the Executive Director who is the Head of the secretariat. Hence, the President of the Society overstepped his authority contrary to regulation 10(1) of the TLS Meeting Regulations and didn't observe the provision of section 21(1) of the TLS Act on heads the Secretariat. 13 TWO; The notice of the impugned EGM had allowed a period shorter than 21 days from the date of its issuance to the scheduled date of the meeting. Hence the legal requirement under regulation 10 (1) of the TLS Meetings Regulations that a prior notice of 21 days is required for convening an EGM was not observed. THREE; documents of the meeting were not timely

circulated to members, hence non-observance of the legal requirement under regulation 11 of the TLS Meetings Regulations that documents of the EGM shall be circulated to members of the 1st respondent within 14 days prior to the scheduled date of the EGM or any other meeting. FOUR; the non-observance of the 21 days' notice requirement and the requirement to circulate meeting documents to members within 14days prior to the EGM would have negatively affected the applicant's participation in the affairs of the 1st respondent. In *James Funke Gwagilo Vs. Attorney General* (supra) illegality of a decision is deemed to be established if the law was not followed at the time of making it. In this application, the calling of the EGM was done without following the law. In such circumstances, I find merit in the application. The first prayer for an order of certiorari is granted. Accordingly, the decision of 14 the 1st respondent dated 1st December, 2023 through its governing council, calling for the EGM, is hereby quashed for illegality and being tainted with procedural impropriety for failure to follow the law. Given that the applicant is an active member of the 1st respondent, in respecting that noble relationship between them, I make no order as to costs. Dated at Dodoma this 15th day of July, 2024. ABDI S. KAGOMBA JUDGE 15

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