

TANZANIA / JUDGMENT

20160913 TZHC Arusha

COURT
TZHCDECIDED
13 September 2016

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..... IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (IN THE DISTRICT
REGISTRY) AT ARUSHA MISC. CIVIL APPLICATION NO. 132 OF 2016 BYC COMPAN-Y LTD
..... APPLICANT VERSUS . ST TANZANIA FOOD & DRUGS
AUTHORITY 1 RESPONDENT HON. PERMANENT SECRETARY FOR MINISTRY OF
HEALTH, COMMUNITY DEVELOPMENT, GENDER, ELDERLY & CHILDREN
2ND RESPONDENT HON. ATTORNEY GENERAL 3RD RESPONDENT

RULING.

S.M. MAGHIMBI, I This is a Ruling following an application brought under the provisions of Section 17(2) of the Law Reform (Fatal Accident and Miscellaneous Provision) Act, Cap 310 R.E 2002 and Rule 5(1), (2) & (3) of the Law Reform (Fatal Accident and Miscellaneous Provision) (Judicial Review Procedure and Fees) Rules 2014, G.N No. 324/2014. The applicant's prayer was that this Court be pleased to grant leave to the applicant to file an application for prerogative order of certiorari against the decision of the st nd 1 and 2 respondent dated 01/04/2016 and 16/05/2016 respectively. The applicant further prayed that the costs of the application be in the course and for any other relief that the court may deem fit and just to grant. The I I I application was supported by an affidavit of Nagunwa Mkumbo, one of the Directors of the Applicant, dated the 11th day of July, 2016. On the 29/07/2016 when the matter came for mention, Ms. Adelaide Kasalla, learned State Attorney representing the respondents revealed that the respondents have no objection to the grant of this application. Having so conceded, on his part, Mr. Duncan Oola, learned Counsel representing the applicant prayed that the order be granted u/s 5(6) of the ~-N No. 324/2014. He further prayed that the court, using its discretionary powers, issue an order for stay of proceedings until the determination of the substantive application. Having gone through the chamber summons and the affidavit in support thereto, my findings are outlined. To start with, an application for leave to apply for the orders is simply a prerequisite to an application for the orders. The purpose is well explained in Halsbury's Laws of England, 14th Edition, paragraph 568. Therein it is said:- "Leave of the court is a necessary pre-condition to the making of an application for judicial review/ and no application for judicial review may be made unless this leave has first been duly obtained"~ The meaning of the cited provision is that what this court is required to do at this stage is to see whether the applicant has sufficient interest in applying for the orders. I am further required to satisfy myself that the order that leave is sought for has left

the applicant with no room to appeal as it was made by the highest competent authority to make the order in 2,, .. f t relation to the matter beforehand. The Halsbury's Laws of England, 14th Edition further says in paragraph 570:- "570. When dealing with an application for leave to apply for Judicial review, the first and foremost consideration which the court must determine is whether the applicant has shown that he has sufficient interest in the matter to which the application relates/~ As for our current application, the applicant has shown that he is the owner of the subject matter which is subject to sanction issued by the 1st respondent and upheld by the 2nd respondent. Therefore I am satisfied that he has shown sufficient interest in the subject matter. Furthermore, I have satisfied myself that the decision confirmed by the 2nd respondent was final and hence the applicant has no other avenue to pursue the matter. The application has hence passed the two tests cited in the Halsbury's Law of England (Supra) cited above. Before I proceed to make necessary orders to the application, I find it pertinent to address the prayer made by Mr. Oola on the day of hearing that the grant of the application should operate as stay of the proceedings of the 1st defendant. With due respect to the learned Counsel, that order cannot be granted for reasons that first; the order was not included in the chamber summons that initiated this application hence it came as an afterthought, and two; that he made the order after the respondent has made his submissions supporting the application hence the respondent was not afforded an opportunity to be heard on that order. As for the main prayers in the Chamber summons, the applicant is hereby granted leave to file an application for prerogative order of certiorari 3 /7 ' {/ against the decision of the 1st and 2nd respondent dated 01/04/2016 and 16/05/2016. The same .shall be lodged in this court within fourteen days from the date of this order. Costs shall be in the cause. I Application allowed th Dated at Arusha this 19 day of August, 2016 SGD: S.M MAGHIMBI I JUDGE 19/08/2016 I Court: Ruling is delivered in Court In the presence of the applicant's advocate Mr. Issa Mrindoko holding brief for Mr. Oola, Advocate and in the th absence of the respondents this 19 d*y of August, 2016. I SGD: S.M. ~AGHIMBI 1 I JUDGE 19/08f2016 A.~ R 'MISHA DEPUTY REGISTRAR "7}q /f'l/} rt, 4

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Prepared on 14 October 2026 · Esheria