

TANZANIA / JUDGMENT

RULING CHELELE NEW

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA MAIN REGISTRY AT DODOMA
MISCELLANEOUS CIVIL CAUSE No. 30 OF 2022. CASE REFERENCE NO. 20220704000432258
ENGELBERT LUCAS CHELELE.....APPLICANT VERSUS THE POLICE FORCE,
IMMIGRATION AND PRISON SERVICE COMMISSION..... 1st
RESPONDENT THE PERMANENT SECRETARY MINISTRY OF HOME
AFFAIRS..... 2 nd RESPONDENT THE INSPECTOR
GENERAL OF POLICE.....3 rd RESPONDENT THE ATTORNEY
GENERAL.....4th RESPONDENT

RULING

24/03/2025 & 07/03/2025 MANYANDA, J.: In this matter, the applicant, Engelbert Lucas Chelele, who is in the process of execution of a drawn order in Miscellaneous Civil Cause No. 30 of 2022 of this Court (Main Registry), via a letter with reference number LLA/HC/DOM/MS/CAUSE/30/2022/01 dated 28/11/2024 lodged a complaint before the Registrar of the High Court of Tanzania, Dodoma Main Registry at Page 1 of 16 Dodoma requesting for rectification of what he calls it a clerical error in the drawn order. The order in question was drawn by the presiding judge in Miscellaneous Civil Cause No. 30 of 2022 which was before Honourable S. C. Moshi, Judge. It concerned an application for judicial review by way of certiorari and mandamus. After full hearing of the application, the trial Judge granted orders, the subject of this matter. The application is contested by the respondents. When the application was called on to hearing on 24/02/2025 Mr. Mwan'genza Mapembe, learned Advocate, appeared representing the applicant and the respondents enjoyed the legal representation of Mr. Nicodemus Agweyo, learned State Attorney. Mr. Mapembe submitted in support of the application arguing that in a ruling in Misc. Civil Cause No. 30 of 2022, delivered by Hon. Moshi, J. on 05/10/2022 at page 30 last paragraph, line 5 from bottom, she made an order which meant the Applicant's status in respect of his employment was reversed to a position where he was before he was charged with disciplinary offence. That the said order was inadvertently left out in the drawn order. He referred this Court to the wording in the ruling which he based his argument which read as follows: - Page 2 of 16 "In fine, before penning off, again it is necessary to point out that, having quashed the whole process, the inquiry and decision, it entails that the status of the applicant's employment reverts back to where it was before the applicant was charged with disciplinary offences" He invited this Court to exercise its powers under section 96 of the Civil Procedure Code, [Cap. 33 R. E. 2022], the

CPC, and rectify the clerical error by including the left-out part in the drawn order. He was of the view that courts of law and parties are duty bound to ensure that the court record represent the true set of affairs that transpired in court, hence this Court is obliged to exercise its powers to rectify the records as it does not represent the true set of affairs of the matter which was before it. On his side, Mr. Agweyo opposed the application attacking the mode under which it was brought in this Court. His argument is that it has not followed the procedure under the enabling provision, Order XLIII Rule 2 of the CPC which require that every application made to the court to be made by way of chamber summons supported with an affidavit, save where a court finds it appropriate to do so entertain an application orally and the parties have consented in a memorandum signed by them or their advocates or any other mode as found appropriate by the court. Page 3 of 16 He was of the view that the mode of application used, that is, an informal letter addressed to the Registrar of the High Court is likely to prejudice the respondents. He went on submitting that the gist of the application that bred the impugned drawn order is that the Applicant asked for writ of certiorari and mandamus, the prayers were adequately determined as indicated at page 30 of the ruling, line four from above, where it was held that one of the prayers of the chamber was unmaintainable. According to the counsel, that means it was not an error, not mistake not slip of pen, not omission, but it was what this Court intended to be done. He prayed the request to be disregard. Mr. Mapembe rejoined that the application that bred the impugned drawn order was all about status of the applicant's employment status, an issue which was not included into the drawn order in question. He clarified that despite the part referred to by the respondents' counsel, still the trial judge put emphasis on the status of the applicant's employment which was not reflected in the drawn order an omission which calls for this Court to rectify it in order for the record to reflect the true set of affairs representing the pure intention of the court on the applicant's status of employment, else there will be prejudice to the applicant because it was so insisted by the trial Page 4 of 1b Judge. He concluded that since the respondents have not shown how they have been prejudiced, then this application is proper before this Court. From the submissions, the issues necessary to be determined is whether this application is properly before this Court. If in affirmative, whether the same is meritorious. Starting with the first issue, the controversy is on the mode this application was brought to this Court. It is not disputed that it was brought by way of an administrative letter which was addressed to the Deputy Registrar. It is not disputed also that Order XLIII Rule 2 of the CPC provides for three alternative modes of bringing applications to this Court. It reads as follows: - "XLIII(2) Every application to the Court made under this Code shall, unless otherwise provided, be made by a chamber summons supported by affidavit: Provided that, the Court may where it considers fit to do so, entertain an application made orally o , where a ll the parties to a su it consent to the order applied fo r being made, by a memorandum in w riting signed by a ll the parties or their advocates, or in su ch o th e r m ode a s m ay b e a p p ro p ria te h a vin g re g a rd to a ll th e circu m sta n ce s u n d e r w h ich th e a p p lic a tio n is m ade" (emphasis added) As it can be seen, Order XLIII Rule 2 quoted above, provides for formal applications which must be by way of chamber summons supported by an Page 5 of 16 affidavit and, with leave of the court, for an informal oral application where the parties have consented in a memorandum signed by them or their advocates. The third option is provided in the emphasized words which is wider left to the

discretion of the court in "any other mode as found appropriate by the court". In my view, the latter mode may take any form including an administrative letter as was done in the instant matter provided that the court finds it appropriate in the given circumstances. In this matter, this Court admitted the letter and treated it as an application. Applications of this mode is not new in our jurisdiction as was rightly elucidated by this Court, Hon. Mirindo, J. in the case of Julius Dukho Matle vs. Malish Gwangay Getagno and 2 Others, Land Appeal No. 81 of 2023

[2024] TZHC 1530 (19 April 2024) where he stated as follows: - "While it is not good practice to address courts and tribunals with letters, peculiar circumstances may dictate so. In Edmund Mjengwa and 6 Others vs John Mnganya and 4 Others, Criminal Appeal 18 of 1999, (2001), the Court of Appeal granted an adjournment after accepting the counsel request addressed in a letter and accompanied by a medical certificate that he was ill. Requests for judicial recusal have occasionally been presented by letters. A letter formed the basis of judicial recusal in Jayant Kumar Chandrahaidubhai Patel vs Attorney General, Civil Appeal 59 of 2012, Court of Appeal of Tanzania at Dar es Salaam Page 6 of 16

(2014) (unreported). The appellant wrote a letter to disqualify two Justices of Appeal who were part of the full bench and the letter was acted upon. A letter to the same effect was written by an accused in Charles Mayunga vs Republic, Criminal Appeal 493 of 2015, Court of Appeal of Tanzania at Tabora (2017) and it was acted upon by the Court of Appeal." It follows, therefore that in certain circumstances as provided under Order XLIII Rule 2 of the CPC, and the authorities cited above, letters may be acted upon. Without hesitation, I find the first issue of no merit and doth hold, as I hereby do, that this application is properly before this Court. As regard to the merit of this application, the part of the ruling relied upon is found at page 30 last paragraph, line 5 from bottom, according to the applicant's counsel, it carries with it an order directing revert of the applicant to his position before the disciplinary actions were taken against him, after been quashed. On the other hand, the State Attorney for the respondents relies on a paragraph found at the same page 30 of the ruling, line four from above which reads as follows: - "It is therefore my view that, a relief for an order of mandamus as prayed by the applicant in prayer 'B' of the chamber summons is not maintainable for the reason that for this court to compel the respondent to reinstate the applicant to his Page 7 of 16 employment post without loss of remuneration and other entitlement would be tantamount to stepping into the shoes of the authority which is required by law to do i.e., forcing the respondents to take specific action on the application which the respondents are supposed to hear and determine in case they would wish to pursue disciplinary process afresh." According to the State Attorney, in the quotation above the trial judge refrained to grant an order of mandamus, hence, the final words cannot sound to mean returning the applicant to his previous position. I have read the whole ruling and noted that there were two orders which were prayed for by the applicant, namely, writ of certiorari (A) and writ of mandamus (B). Having heard both parties, the trial judge made two findings as depicted on page 30. The first finding is found at page 29 reading as follows: - "Basing on the

discussion herein above, I find that an order of certiorari as prayed in prayer A 'is maintainable." The second finding is found at page 30 which read as follows: - "It is therefore my view that, a relief for an order of mandamus as prayed by the applicant in prayer 'B' of the chamber summons is not maintainable..." Page 8 of 16 After the findings quoted above, the trial judge went on making orders on each finding. In respect of the first finding on writ of certiorari, the order is found at page 30, it reads as follows: - "That said and done, I grant an order for certiorari as prayed, let it be issued accordingly." The trial judge made another order, which is relied upon by the applicant's counsel, in respect of the second finding, also found at page 30, reading as follows: - "In fine, (sic) before penning off, again, it is necessary to point out that, having quashed the whole process, the inquiry and decision, it entails that the status of applicant's employment reverts back to where it was before the applicant was charged with disciplinary offences" The impugned drawn order under discussion was extracted reading as follows: - "WHEREAS; The Applicant had filed an application under rule 8(1) (a) (b) and (2) of the Law Reform Fatal Accident and Miscellaneous Provisions (Judicial Review, Procedure and fees) Rules, 2014, praying for the following orders: A. An order for certiorari quashing: - i. Whole proceedings, judgment and findings of the military tribunal for being tainted with serious irregularities both of procedure and decision. Page 9 of 16 ii. Whole proceedings, judgment and findings of the military tribunal, for being very unreasonable that no reasonable authority could have reached to that decision. iii. Whole proceedings, judgment and findings of the military tribunal for lack of reason by both not taking into account matters which ought to have been taken into account and taking into account matters which ought not to have been taken into account. iv. Letter dated 14th day April, 2020 by the 1st respondent which terminated the applicant from employment without having jurisdiction to exercise such powers v Letters dated 14th day of April, 2020 by the 1st respondent and 15th day of May, 2020 by the 3rd respondent; while the former is the decision reached by the 1st respondent terminating the applicant from employment in Tanzania Police Force without any jurisdiction whatsoever to exercise such powers; the latter is the letter reached by the 3rd respondent informing the Applicant about the decision reached by the 1st respondent. vi. Letter dated 26th day of October, 2021 by the second respondent upholding the decision of 1st respondent rendered on 14th day of April, 2020. B. An order for mandamus compelling the 2nd respondent to reinstate the applicant from his employment in Tanzania Page 10 of 16 Police Force without loss of remuneration and other entitlements from the whole period which he was out of employment as the decision terminating the applicant's employment was in total violation of the principles of natural justice and lack of jurisdiction by the 1st respondent. C. Costs of this application. D . Any other relief(s) which the honourable Court shall deem fit and just to grant in favour of the applicant. AND UPON the application coming for disposal in chambers on 12th October, 2022 before Hon. S. C. Mosh, Judge in the presence of Mr. Mathew Fuko, State Attorney, and in absence of the applicant THIS COURT DOETH HEREBY ORDERS THAT

1. A n o r d e r f o r c e r t i o r a r i i s g r a n t e d a s p r a y e d , l e t i t b e i s s u e d a c c o r d i n g l y;
2. A n o r d e r f o r m a n d a m u s i s n o t m a i n t a i n a b l e B Y T H E C O U R T G i v e n u n d e r m y H A N D a n d t h e S E A L o f t h e C o u r t t h i s 12th O c t o b e r , 2022 S g d . S . C M O S H I J U D G E E x t r a c t e d t h i s 20 h d a y o f O c t o b e r , 2022 I s s u e d t h i s 21st O c t o b e r , 2022"(emphasis added) Page 11 of 16 As it can be seen, from the emphasized words in the quotation, the impugned order quoted a correct order in respect of a writ of certiorari, however, when it came to a writ of mandamus, the drafter quoted a finding of the court as explained above instead of the order of the court in a form of directive. In my firm opinion therefore, the impugned drawn order is in variance with the ruling. A question that follows is what the remedy is. The counsel for the applicant argues that this Court can rectify the drawn order so as to make it reflect the true state of affairs that transpired in court. On the other hand, the State Attorney for the respondents argues that this Court has no power to change what was an obvious intention of the court that the order for mandamus was denied being unmaintainable, it was not an error, not mistake not slip of pen, not omission. I agree with the applicant's counsel that courts are required oversee that the court record represent the true set of affairs that transpired in court. As explained above, this Court has observed an obvious variance between the ruling and the drawn order, I think, it has power to rectify the drawn order under section 96 of the CPC which reads as follows: - "96. Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therefrom from any accidental slip Page 12 of 16 or omission may, at any time, be corrected by the court either of its own motion or on the application of any of the parties." (emphasis added) The emphasized words in the quotation above, in my understanding cover a situation like the instant one; where there has been an error from an accidental omission to recap in a drawn order the correct order of the court. I am increasingly of the view that by doing so this Court will not be altering the ruling, for doing so will be acting ultra vires in that it is functus officio, but harmonizing only the two documents by aligning the drawn order with the ruling without affecting its content, is an act within the power of this Court. I say so because, a drawn order being a summary of the decision of the court, it must reflect what is in the ruling, not otherwise. Its contents must reflect the contents of the ruling, no matter whether the ruling is correct. In case the respondents feel bemused by the ruling, they may assail it in a proper forum. Moreover, the State Attorney for the respondents has not been able to point any likelihood of prejudice as alleged. On the position of the law that a drawn order must contain the same contents of the ruling, I am fortified by the decision of the Court of Tanzania in the case of Integrated Property Investments (T) Limited and 2 Page 13 of 16 Others vs. The Company for Habitat and Housing in Africa Shelter Afrique, Civil Application No. 162 of 2015, [2016] TZCA 733 (5 February 2016). In that case, the Court of Appeal of Tanzania interpreted Order XX Rule 6(1) of the CPC and stated as follows: - "The judgment forms the concluding part of the civil suit and it determines the rights and liabilities of parties. Basically, the judgment is followed by a decree which is its operating part and has to be in harmony with the judgment." Although the Court of Appeal of Tanzania was dealing with a decree, a drawn order also bears the same condition, as it was rightly observed by this

Court, Hon. Mbagwa, J. in the case of Zawadi Mustapha vs. Patrick Amani Mbarika (Administrator of estate of Anastazia Kibho Wakara), Miscellaneous Land Appeal No. 110 of 2021, [2023] TZHC 18302 (21 June 2023), whereby, after making reference to the Court of Appeal of Tanzania cases of Citibank Tanzania Limited vs Tanzania Telecommunications Company Limited and 4 Others, Civil Appeal No. 23 of 2008, [2015] TZCA 187 (4 August 2015) and Mire Artan Ismail and Another vs Sofia Njati, Civil Appeal No. 31 of 2006 (unreported), his Lordship Mbagwa, J went on stating as follows: - "On my part, I entirely agree with the learned counsel for the respondents that a drawn order should contain similar contents Page 14 of 16 to those of a decree. The only difference is that a decree results from judgment whereas a drawn order arises from the ruling ." In the result, for reasons stated above, I find that this application is meritorious, the second main issue in this matter is answered in affirmative. Consequently, I do hereby make the following orders:

1. The application by the applicant for rectification of the drawn order is granted
2. The drawn order is rectified by deleting the words "A n o r d e r f o r m a n d a m u s i s n o t m a i n t a i n a b l e " appearing in order number two are deleted and replaced with the words "h a v i n g q u a s h e d t h e w h o l e p r o c e s s , t h e i n q u i r y a n d d e c i s i o n , i t e n t a i l s t h a t t h e s t a t u s o f a p p l i c a n t ' s e m p l o y m e n t r e v e r t s b a c k t o w h e r e i t w a s b e f o r e t h e a p p l i c a n t w a s c h a r g e d w i t h d i s c i p l i n a r y o f f e n c e s"
3. The Deputy Registrar is directed to extract an amended drawn order from the ruling in Miscellaneous Civil Cause No. 30 of 2022 incorporating the amendments hereinabove.
4. No order as to costs. It is so ordered. Dated at Dodoma this 10th day of March, 2025 Page 15 of 16 F.K. MANYANDA JUDGE Delivered at Dodoma this 10th day of March, 2025, by virtual, in the presence of the applicant's counsel, Mr. Mwang'enza Mapembe, learned Advocate and Mr. Baruwa, State Attorney, for the respondents. Application granted, the drawn order is amended by deleting the words " A n o r d e r f o r m a n d a m u s i s n o t m a i n t a i n a b l e " appearing in order number two are deleted and replaced with the words "h a v i n g q u a s h e d t h e w h o l e p r o c e s s , t h e i n q u i r y a n d d e c i s i o n , i t e n t a i l s t h a t t h e s t a t u s o f a p p l i c a n t ' s e m p l o y m e n t r e v e r t s b a c k t o w h e r e i t w a s b e f o r e t h e a p p l i c a n t w a s c h a r g e d w i t h d i s c i p l i n a r y o f f e n c e s". Right of appeal fully explained to the parties. F.K. MANYANDA JUDGE Page 16 of 16

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