

TANZANIA / JUDGMENT

RULING LEAVE FOR IBRAHIM HERITH RIBAN VS CS AND PCCB AND AG FINAL NEW

COURT
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (MAIN REGISTRY) AT DODOMA
MISCELLANEOUS CIVIL CAUSE NO. 20529 OF 2024 IN THE MATTER OF AN APPLICATION FOR
LEAVE TO A P PLY FOR ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION AGAINST
THE RESPONDENTS AND IN THE MATTER OF CHALLENGING THE DECISION OF THE
CHAIRPERSON OF THE OVERSIGHT COMMITTEE (CHIEF SECRETARY) IN HIS APPELLATE
AUTHORITY BY FAILING TO CONSIDER AND GIVE W EIGHT TO THE REASONS LEADING TO
THE DELAY OF APPEAL AS WAS GIVEN BY THE APPLICANT AND INSTEAD TO LEAVE THE
DECISION OF THE PREVENTION AND COMBATING OF CORRUPTION BUREA (PCCB) ACTED
UPON CONTRARY TO THE LAW AND THE PRINCIPLES OF NATURAL JUSTICE BETWEEN
IBRAHIM HERITH LIBAN APPLICANT AND THE CHAIRPERSON OF THE OVERSIGHT
COMMITTEE (CHIEF SECRETARY) .. 1st RESPONDENT PREVENTION AND COMBATING OF
CORRUPTION BUREAU (P C C B)..... 2nd RESPONDENT ATTORNEY GENERAL 3 rd RESPONDENT

RULING

08th& 21thOctober, 2024 KAGOMBA, J. 1 The applicant herein was dismissed from employment by the 2nd respondent for obtaining a colossal amount of money by false pretenses from PCCB SACCOS LIMITED. Being aggrieved, he appealed to the 1st respondent, who is the appellate authority under the Prevention and Combating of Bureau Regulations GN No. 300 of 2009 (herein after referred to as the "PCCB Regulation"). However, the appeal was rejected on the ground that it was lodged out of time. Dissatisfied by such a decision, the applicant now seeks leave of this Court to file an application for judicial review aiming to obtain orders of certiorari, mandamus and prohibition against both the decision to reject his appeal and his dismissal from employment. Briefly, the applicant who was employed by the 2nd respondent as an Assistant Investigation Officer and later promoted to Senior Investigation Officer II, was a member of the Board of PCCB SACCOS LTD. Upon investigation, he was implicated in diversion of money from the account of the said PCCB SACCOS LTD to his personal account. A charge bearing a total of 27 counts was preferred against him and was called for a hearing before a Disciplinary Committee formed by his employer. Despite denying the charge, the applicant was found guilty in all the 27

counts and was eventually dismissed from employment on 12th October, 2023 by virtue of authority conferred upon his employer under Regulation 32(1) of the PCCB Regulation. 2 Being aggrieved, the applicant lodged his appeal to the 1st respondent as aforesaid, whose decision was rendered on 20th February, 2024 rejecting the appeal for being lodged out of time. Facts has it that the applicant later lodged a complaint to the President of the United Republic of Tanzania (the "President") who on 12th June, 2024 upheld the decision of the 1st respondent. It is from the above background the applicant has filed this application under section 17 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 RE 2019] and Rule 8(1) (a) (b), (2), 3, 4 and 5 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 and any other enabling provision of the law praying as follows: -

- (a) That this Honourable Court be pleased to grant LEAVE on the part of the applicant herein so that he can file an application for certiorari to quash and set aside the decisions of the 1st respondent vide his letter dated 20th February, 2024 which denied his appeal and that of the 2nd respondent which had the effect of terminating the applicant from employment but without adhering to the law and the principles of natural justice. An order of mandamus to compel the 1st and 2nd respondents to act in accordance with the requirements of the laws and prohibition against the respondents to interfere with the employment of the applicant without following laws and procedures.
- (b) Any other order (s) that this Honourable Court may be pleased to grant. To support the application, the applicant filed an affidavit as well as a Statement as required by the law. On their side, the respondents filed a joint counter affidavit affirmed by Ayoub Hamis Akida, the Director of Administration and Human Resources Management of the 2nd respondent, which was replied to by the applicant. The respondents, who also filed a reply statement opposing the application, maintain that the applicant did not act ethically and lacked integrity while working with the 2nd respondent. They hold themselves unblameworthy as the disciplinary hearing was done in accordance with the law. When the application was called on for hearing, Mr. Isaac Tasinga, learned Advocate, and Mr. Nicodemus Agweyo, learned State Attorney, represented the applicant and the respondents, respectively. It was Mr. Tasinga's main contention that since Regulation 46 of the PCCB Regulation provides for documents to be supplied to the aggrieved employee to guide him in preparation of his appeal, and given that the same were not availed to the applicant timely despite his evident follow up, the decision of the 1st respondent that the appeal was lodged out of time is unfair and illegal as it did not consider the provision of the Law of Limitation Act, [Cap 189 R.E 2019]. He added that the said Act requires the time spent for preparation of the decision and proceedings to be excluded in reckoning the time for filing an appeal. According to the learned Counsel, those essential documents were eventually supplied to the applicant on 22nd January, 2024 whereupon he managed to file his appeal within a 14-day period stipulated under Regulation 45(1) of the PCCB Regulation, only to be informed that the same was time barred. He added that the decision of the 1st respondent dated 20th February 2024 was transmitted to the applicant on 23rd February, 2024 who received the same after two months, via posts. Mr. Tasinga faults the decision of the 1st respondent for not considering

that it was necessary for the 2nd respondent to supply the applicant with the record of the impugned disciplinary hearing proceedings to guide his preparation of the appeal; and for not considering the efforts done by the applicant to timely obtain the said documents from the 2nd respondent. 5 As for criteria for granting leave, the Counsel submitted that the decision of the 1st respondent is final and conclusive, hence the applicant's resort to judicial review remedies as the remaining avenue. Regarding the timeliness of the application, he submitted that it was timely filed within six month from the date of the final decision of the 1st respondent. The learned Counsel is also of the view that an arguable case has been made out by the applicant. He submitted that while regulation 46 of the PCCB Regulation mentions proceedings of the disciplinary hearing to be among the documents required to guide preparation of the appeal, the 1st respondent said that such documents were not necessary, hence the need for the Court to determine that issue during judicial review. He submitted further that the applicant was charged based on allegations which did not arise from his terms of employment and that during disciplinary hearing, the employer abdicated his prosecution duty to the Chairperson of the Disciplinary Committee. He found it faulty. Finally, he demonstrated his client's interest in the matter before the Court, arguing it concerns the applicant himself who is the victim, hence he has sufficient interest enabling him to seek leave to file an application for b judicial review. The learned Counsel wound up by citing the decision of this Court in Kiavo Juma Mshana vs Board o f Trustees o f Tanzania National Parks & 2 Others, Misc. Civil Cause No. 7 of 2020, High Court, Moshi District Registry, to support his client's fulfilment of the conditions for granting of leave. In his reply, Mr. Agweyo, learned State Attorney, was at one with his counterpart regarding the criteria to be met for granting of leave. He added that the decision to be subjected to judicial review must be a final decision. According to him, the applicant has not been able to satisfy this condition of finality of the decision, adding that the final decision to be reviewed is that of 12th June, 2024 made by the President, as per annexure IB-7 and not that of the Chairman of the Oversight Committee made on 20th February 2024. For this reason, he deems the application incompetent. As regards the delay in supplying the applicant with proceedings of the disciplinary committee, the learned Attorney simply denied the allegation. He added that even if the allegation was was true, the applicant could have raised that concern to the 1st respondent and seek time extension. On the lamentation that the 2nd respondent abdicated his prosecution duty during disciplinary hearing, the learned State Attorney also denied that 7 assertion for being untrue. He added that such an assertion was made nowhere in the entire affidavit, hence it was a mere statement from the bar to be disregarded by the Court. Lastly, the learned Attorney opposed the granting of leave on the ground that the President who, according to him is the maker of the final decision to be reviewed, has not been made a party to this application. His contention here is that even if the Court would find the application grantable, justice will not be rendered if the maker of the said final decision is not afforded an opportunity to be heard on the reason for her decision. Mr. Agweyo wound up by praying for the dismissal of the application with costs. In his rejoinder Mr. Tasinga maintained that the decision contained in annexure IB-7 is not the basis of this application, rather the basis is the decision of the 1st respondent dated 20th

February 2024 which rejected the appeal for being time barred. Clarifying, he rejoined that regulation 45(1) and (2) of PCCB Regulations reveal a lacunae when it states that an appeal shall lie to the Chairman of the Oversight Committee who is also the Chief Secretary, while it's the same person who ordinarily replies to all appeals lodged by public servants to the President. He referred to annexure IB-7 as an example, arguing that such a lacunae cannot be swayed to prejudice the applicant. Based on the same argument above, Mr. Tasinga doesn't think the President ought to be a party to this application, as contended by his counterpart. To his mind, annexure IB 7, which was signed on behalf of the Chief Secretary, does not serve any new purpose except to refer the applicant to the Chief Secretary's earlier decision. As regard the argument that the applicant ought to seek extension of time from the 1st respondent, Mr. Tasinga was indifferent. It was his view that his client had a right to reckon that he was to benefit from the requirements for appeals provided for under Regulation 46 of the PCCB Regulations. The Counsel further recalled that the Regulation does not provide for extension of time, hence the Law of Limitation Act, section 19(2) which excludes time for preparation and supply of proceedings, being the general law, must apply *mutatis mutandis*, read together with Regulation 46 of the PCCB Regulation. In winding up, the learned Counsel expressed his views that the issues raised by his counterpart are to be determined during judicial review. He prayed for granting of the application as, according to him, the applicant has met all the required conditions. The above rival submissions reveal that both learned Counsel are in agreement that, there are established criteria to be looked at by the Court in granting leave. Such criteria are as stated in the case of *Kiavo Juma Mshana vs Board of Trustees of Tanzania National Parks and 2 Others* (supra), which was cited to the Court by Mr. Tasinga, as well as in a multitude of other similar decisions of this Court and the Court of Appeal. Such conditions have, invariably, been stated in *Emma Bayo vs Minister for Labour and Youths and 2 Others*, Civil Appeal No. 79 of 2012 CAT at Arusha and *Nanadhra Engineering and Construction Co. Ltd vs Minister of Constitution and Legal Affairs and Attorney General*, Misc. Cause No. 8968 of 2024, High Court Main Registry. In *Narandhra Engineering*, all the criteria currently being applied in considering leave applications, including those stated in *Emma Bayo*, have been mentioned and deliberated upon. The criteria are as follow: "1. There must be prima facie or arguable case;

2. The applicant has sufficient interest in the matter;
3. The matter must have been brought within time limit of six months.
4. There must be a decision over the matter made by a public body;
5. There must be exhaustion of remedies;
6. That the Application must be made in good faith. The submissions by the learned Counsel further reveal there is no issue as to whether the applicant has shown sufficient interest in the application; filed it in court timely; indicated a decision made by a public body for judicial review, and if the application is bona fide all these issues have not attracted any controversy between the Counsel. They seem to agree that the applicant has met all such

criteria, and I agree with them. Under the above circumstances, therefore, the issues to be addressed by the Court are; firstly, whether the applicant has exhausted all available remedies before filing this application. Secondly, whether a prima facie or an arguable case has been established by the applicant and thirdly; whether the application is incompetent for not joining the President as a party. As to whether the applicant has exhausted available local remedies, the contention by the applicant's Counsel is that the appeal to the 1st respondent was lodged by observing the prescription of Regulation 45(1) of the PCCB Regulation which makes the 1st respondent's decision final and conclusive, despite the embedded shortfalls in the regulation. Regulation 45(1) (2) state as follows: - "45-(1) Any investigation officer other than those appointed by the President, who is aggrieved by an award made by the Director General may within fourteen days of the notification to him thereof, appeal in writing against the same to the Chairperson of the Oversight Committee.

- (2) Upon such appeal as provided in sub-regulation (1) of this Regulation the Chairperson of the Oversight Committee may either allow or dismiss the appeal or may uphold the finding and confirm or remit the punishment". [Emphasis added]. Apparently, regulation 45(1) (2) being the only specific provision of the law governing appeals by investigation officers of the 2nd respondent, is silent on further appeal after the decision of the Chairperson of the Oversight Committee is made. The entire PCCB Regulation is silent too. Probably, it is for this reason, the applicant's Counsel submitted that the decision of the Chairman of the Oversight Committee, which the applicant seeks to challenge, is final and conclusive. Mr. Agweyo, holds a different view. To him, it is the President who is the final authority. However, the learned State Attorney didn't submit a reason for holding this view. 12 In either view, the question whether the applicant has exhausted local remedies is, in my view, answered in the affirmative, for reasons demonstrated hereunder: - Firstly, the disciplinary affairs of the employees of the 2nd respondent are governed by specific law which is the Prevention and Combating of Corruption Act [Cap 329] and its regulations. Under regulation 45(1) of the PCCB Regulation, the responsible Minister as a law maker, neither provides for a further appellate platform in respect of disciplinary matters pertaining to employees of the rank of investigation officers, nor does she specify whether the decision of the 1st respondent is final and conclusive. I think this is the lacunae the Counsel for the applicant has lamented about. In contrast, under regulation 45(3), the law maker was minded to provide for further appellate authority in respect of appeals from disciplinary decisions pertaining to employees of the rank of assistant investigation officers. This provision states as follows: - "(3) Any Assistant Investigator who is aggrieved by any finding or award made by the Director, Regional Bureau Chief or District Bureau Chief may within fourteen days of the notification to him thereof appeal in writing to the Director General, and the Director General may confirm or vary any finding or remit any punishment awarded and in 13 all such cases the decision of the Director General shall be final". [Emphasis added] A question may be asked as to whether the discrepancy in the drafting of regulation 45(1) and 45(3), as cited above, was deliberate or an oversight. Obviously, that is not known to the Court. What is apparent is that the words used in the cited provisions are devoid of any

obscurities, ambiguities or grammatical difficulties, hence no room for the Court to apply rules of interpretation. (See: O dger' Construction o f Deeds and Statues, 5th Edition, Universal Law Publishing, New Delhi, 2013 at page239). Therefore, since regulation 45(1) above does not provide for further appeal in respect of decisions pertaining to investigation officers, I am of a considered view that it will be unfair and injudicious to condemn the applicant for not exhausting local remedies, which have not been made known to him. In Raawya Hermohamed Jalai & Another vs. W aziri Nashiri (Social W elfare Officer) & 9 Other, Miscellaneous Civil Cause No. 13565 of 2024, and The Registered Trustees o f Korean M ethodist W elfare Mission in Tanzania vs. The Com m issioner General Tanzania Revenue Authority & Another, Miscellaneous Civil Cause No. 3970 of 2024, both being decisions of this Court, I held to the effect that 14 where exhaustion of local remedies has been pleaded to object the granting of leave, such a remedy has to be available to the applicant. The word "available" connotes that the appeal procedure to be exhausted must be established by law, as a matter of right. The appellate channels should not be imaginary or of a kind that makes it difficult for a complaint to achieve his or her claimed rights. As I intimated earlier, Mr. Agweyo did not tell the Court which appellate procedure the applicant was bound to exhaust. Neither did he cite any provision of the law through which the applicant could further appeal as a matter of right. What was clearly available to the applicant is only the right to appeal to the Chairman of the Oversight Committee. Secondly, despite there being no further appeal avenue in the PCCB Regulation, the applicant somehow managed to move his grievances to the President who confirmed the decision of the 1st respondent. Even in this scenario, the applicant cannot be condemned for not exhausting local remedies, having managed to reach out to the President. For the above reasons, I am of the settled view that in the face of the law as drafted, the applicant has exhausted the available local remedy. The next issue to be determined is whether a prima facie or an arguable case has been established. While Mr. Tasinga asserted that the 15 impugned decisions were unfair and unlawful for, among other reasons, not considering the Law of Limitation Act, [Cap 89 RE 2019], Mr. Agweyo has attempted to impress on the Court that what the applicant complains about are non-issues. He argued that the applicant could have sought extension of time before filing his appeal to the 1st respondent. According to him, the disciplinary procedure was done according to the law. I have followed up the arguments by both Counsel. The main complaints which have prompted the applicant to apply for leave to file for judicial review have been stated. The applicant impugns the decision to dismiss him from his employment for being based on allegations which are not related to his employment terms. He is also aggrieved by the fact that his appeal to the 1st respondent was thrown out on ground of being time barred while, to him, the delay was not of his own making. He also faults his employer's abdication of prosecution duty and other infringements. The prima facie case therefore involves at least three arguable questions; whether it was proper in law for the 2nd respondent to dismiss the applicant from employment on allegations not related to the terms of his employment; whether the disciplinary hearing was conducted in accordance with the law and whether the decision of the 1st respondent to reject the 16 applicant's appeal observed the requirements of the Law of Limitation Act, [Cap 89 RE 2019]. There has

been some temptation to draw the Court into considering the validity of the claims made by the applicant. I resist such temptations. The law is clear that at this leave stage, the Court has no mandate to delve into the merits of the very questions reserved for judicial review. (See: Regional Manager Tanroads Lindi vs D.B Shapriya & Co., Civil Appeal No. 86 of 2010) TZCA 233 (5 June 2017). For all those reasons, I hold that a prima facie case has been established by the applicant. Finally, we have the issue whether the President ought to be joined as a party to this application. It was Mr. Agweyo's view that since the final decision on the fate of the applicant's grievances was made by the President on 12th June, 2024, the Court will be condemning the President unheard if not joined as a party to these proceedings. On his side, Mr. Tasinga maintained that the final decision to be challenged, if leave is granted, is that of the 1st respondent and not the President's decision. This issue shall not detain me. In view of the position which I have taken on exhaustion of local remedies, which is to the effect that an appeal to the President was not available as a remedy to the applicant, it follows therefore that the contention by Mr. Agweyo with regard to this issue lacks feet to stand on. 17 Since the PCCB Regulation gives the applicant a right to appeal to the 1st respondent and provides for no further appeal, I hold the view that the President has no place in this application for not being an established appeal authority as well as not being a party in the disciplinary proceedings that gave rise to this dispute. In the final analysis, the applicant has met all the criteria for granting of leave to file his application for judicial review. Accordingly, the application is granted and so is the leave as craved. No order as to costs. The applicant has fourteen (14) days to file his application for judicial review as required by Rule 8(1) (b) of the Law Reform (Fatal Accidents and Miscellaneous Amendment) (Judicial Review Procedure and Fees) Rules, 2014. Dated at Dodoma this 21st day of October, 2024. A. S. KAGOMBA
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