

TANZANIA / JUDGMENT

Mhando Bakari Leave Ruling 1 1

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Page 1 of 8 IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA GEITA SUB-REGISTRY AT GEITA MISCELLANEOUS CAUSE NO. 18408 OF 2024 IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF MANDAMUS AND CERTIORARI IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) ACT, [CAP. 310 R.E. 2019]; IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) (JUDICIAL REVIEW PROCEDURE AND FEES) RULES GN. NO 324 OF 2014; AND IN THE MATTER OF PUBLIC SERVICE, THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA BEING A FINAL APPELLATE AUTHORITY ACTING ILLEGALLY BETWEEN MHANDO BAKARI MHANDO.....APPLICANT AND THE ATTORNEY GENERAL.....1ST RESPONDENT CHIEF SECRETARY.....2ND RESPONDENT

RULING

Date of last order and Ruling: 29/08/2024 MWAKAPEJE, J.: The applicant herein, Mhando Bakari Mhando, filed this application through chamber summons supported by his affidavit under Rules 5(1),(2),(4),(5) and 2(1),(2),(5) of the Law Reform Fatal Accidents Page 2 of 8 Miscellaneous Provisions)(Judicial Review Procedure and Fees) Rules, 2014, for the following reliefs:

1. That this Honourable Court be pleased to grant leave to the applicant to apply for judicial review to seek orders of Certiorari and Mandamus to quash the order of dismissal imposed by the President of the United Republic of Tanzania to the Applicant on 21st August 2023 which is illegal and an order for mandamus to direct the respondent to legal act by re-instating the applicant.
2. That the costs of this application be on the cause. In his affidavit, the applicant stated that on the 15th of May 2020, he was accused of falsifying information in the salary payment and service system (HCMS) and was issued a summons to appear before the inquiry committee on the 6th of November 2020. He further asserted that upon arriving at the designated venue, the inquiry committee was nowhere to be found. Subsequently, on the 23rd of August 2021, he received a termination letter. He argued that he was dismissed from his position as a human resources officer without being granted a fair hearing. His appeals to the Public Service Commission and the President on 21 August 2023 proved unsuccessful. In the collective counter-affidavit and statement in reply to the applicant, the respondents rebutted

the applicant's assertion by affirming that the applicant, as instructed, attended and was interrogated by the inquiry committee. This was substantiated by a copy of the disciplinary committee proceedings, where the applicant was questioned as per the Page 3 of 8 respondents. Consequently, the respondents contested the applicant's claim of being deprived of the opportunity to be heard. At the hearing, the applicant enjoyed the services of Messrs. Siwale Yisambi and Shija Jeremia, learned advocates, while Mr. Allan Mbuya, a learned State Attorney, represented both respondents. To begin with, Mr Siwale prayed for adopting a chamber summons and affidavit as part of their submissions. He outlined two main issues on the grounds of application: the first related to the right to be heard, and the second concerned procedural irregularities. Mr Siwale stated that, regarding the right to be heard, as detailed in paragraphs 7 and 9 of the Affidavit, it was impeded by the Inquiry Committee. He further noted that Rule 6 of the Law Reform Fatal Accidents Miscellaneous Provisions)(Judicial review Procedure and Fees) Rules, 2014, specifies that an application for leave should be made within six months. The application is accompanied by the ruling of an extension of time, as indicated in paragraph 14 of the affidavit. Mr Siwale also mentioned that the applicant had expressed a keen interest in this application due to the aforementioned reasons, specifically, the right to be heard and the procedural irregularities. Mr Shija Jeremiah told the court that the conditions through which the grant of application for leave to apply for judicial review were specified Page 4 of 8 in the case of Emma Bayo vs Minister for Labour and Youth Development and Others (Civil Appeal No. 79 of 2012) [2013] TZCA

190. He stated that one consideration is the presence of an arguable case; another is the timeliness of the application within six months; and lastly, the applicant's vested interest in bringing forth the main application. Mr Jeremiah contended that the present application before this court aligns with the three conditions, keeping in mind that the applicant was granted an extension of time. He further stated that there are indeed debatable issues pertinent to this application, and the applicant possesses a substantial interest in the matter. Consequently, he prayed for the applicant to be afforded the opportunity to apply for judicial review. When responding, Mr Mbuya told the court that the requirement of leave is provided for under Rule 5 of the Law Reform Fatal Accidents Miscellaneous Provision, Rules, 2014, though the law does not provide for the conditions to be considered by the court in granting leave. He, however, informed the court that the conditions had been stated by the case laws, and to be precise, he referred this court to the cases of Emma Bayo (supra) and Baltazar Bosco Mahai vs Tanganyika Law Society and Another (Misc. Civil Cause No 27673 of 2023) [2024] TZHC 1348, which added two more conditions from the one stated in the case of Emma Bayo (supra). The case of Baltazar Bosco Mahai (supra) listed five conditions to be proved by the applicant seeking leave: must have Page 5 of 8 sufficient interest, must have an arguable case, a decision must have been made over the matter, must have exhausted local remedy, and must have applied within six months. Mr Mbuya finally concluded by saying that, looking at the five conditions stated in the case cited above, he is of the opinion that the applicant proved to have met them. Therefore, he conceded and also urged the court to

grant the application. Upon consideration of the submissions, the principal issue for determination is the assessment of the merits of the application. As accurately submitted by the learned counsels, for leave to file a judicial review to be granted, the applicant must satisfy specific legal prerequisites. These prerequisites include demonstrating compliance with the statutory time limit by applying within six months from the date of the impugned decision, establishing sufficient locus standi, presenting a prima facie case that justifies the grant of judicial review, and exhausting all available local remedies. These requirements are enshrined in Section 19(3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310 R.E. 2019, Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 and precedents as stated by Mr Mbuya. For instance, in the case of Emma Bayo (supra), it was categorically stated that: “It is at the stage of leave where the High Court satisfies itself that the applicant for leave has made out any arguable case to Page 6 of 8 justify the filing of the main application. At the stage of leave, the High Court is also required to consider whether the applicant is within the six-month limitation period to seek a judicial review of the decision of a tribunal subordinate to the High Court. At the leave stage, the applicant shows that he or she has sufficient interest to be allowed to bring the main application. These are the preliminary matters which the High Court sitting to determine the appellant's application for leave should have considered while exercising its judicial discretion to either grant or not to grant leave to the applicant/appellant herein.” [Emphasis supplied] In the present application, the decision purporting to terminate the applicant's employment was rendered on 23 August 2021, subsequent to the applicant's two unsuccessful appeals to the Public Service Commission and the President on 21 August 2023, when his appeal was determined. The applicant filed this application on 30 July 2024, following a successful application for an extension of time. Therefore, this application is within the prescribed six-month period, as supported concurred by the learned State Attorney. Secondly, the applicant must establish that he has sufficient interest in the matter and an arguable case exists. In this application, it is the applicant, formerly a Human Resource Officer, who was dismissed from service, as indicated in his termination letter dated 21 August 2023. Therefore, he has demonstrated sufficient interest in this matter, which has not been disputed by the respondents' counsel. Page 7 of 8 Thirdly, regarding establishing a prima facie case, the applicant alleges a violation of his right to a fair hearing. He contends that the disciplinary committee was constituted. However, his employment was terminated without affording him an opportunity to present his case, as evidenced by the dismissal letter issued without prior notice. Mr Mbuya also confirmed that the applicant satisfied this requirement, and in the same vein, he prayed for the application to be granted. Lastly, concerning his employer's termination decision and the exhaustion of local remedies, the applicant, upon his termination, pursued all available avenues to contest his dismissal. He lodged appeals with the Public Service Commission and the President, both of which were unsuccessful. This sequence of actions demonstrates that the applicant exhausted all possible means to challenge his termination before resorting to judicial review as a last resort. Having considered the submissions of the applicant and the learned counsels and being guided by

Section 19(3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310 R.E. 2019, Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, and the case of Emma Bayo (supra) and that of this court of Baltazar Bosco Mahai, it is evident that there exists an arguable case concerning the alleged violation of the Page 8 of 8 applicant's right to be heard, which merits consideration by the court upon the granting of leave for the main application for judicial review. In light of the foregoing, I find that the applicant's application is meritorious. Accordingly, leave to file an application for orders of certiorari and mandamus is hereby granted. The applicant is ordered to file the application for judicial review within fourteen (14) days from the date of this order. In the circumstances, I make no order as to costs. It is so ordered. DATED at GEITA this 29th day of August 2024. G.V. MWAKAPEJE JUDGE This Ruling is delivered this 29th day of August 2024 in the presence of Mr Yisambi Siwale and Shija Jeremiah, both learned to advocates for the Applicant, and Mr Allen Mbuya, learned State attorney for both Respondents. The Applicant is also present. G.V. MWAKAPEJE JUDGE

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