

TANZANIA / JUDGMENT

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12 February 2025

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB-REGISTRY AT MUSOMA MISCELLANEOUS CAUSE NO. 000024411/2024 REFERENCE NO. 202409301000024411 IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF MANDAMUS AND CERTIORARI BY MWALIMU KASOGA MANGIRE KASOGA 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, 2014 [G.N NO 324 OF 2014] IN THE MATTER OF JUDICIAL REVIEW TO CHALLENGE THE DECISION OF THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA AND IN THE MATTER OF JUDICIAL REVIEW TO CHALLENGE THE DECISION OF THE EXECUTIVE SECRETARY TEACHERS SERVICE COMMISSION, BUNDA DISTRICT MARA REGION BETWEEN MWALIMU KASOGA MANGIRA KASOGA..... APPLICANT VERSUS THE EXECUTIVE SECRETARY TEACHERS SERVICE COMMISSION..... 1st RESPONDENT THE ATTORNEY GENERAL..... 2nd RESPONDENT Page 1 of 7

RULING

12th & 12th February, 2025 M. L. KOMBA. J.; This is ruling resulted from an application for leave to file an application for Judicial Review for orders of certiorari and mandamus. The application has I been preferred by way of chamber summons made under Section 18 (1) and 19 (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [Cap 310 R.E 2019] and Rule 5(l)(2)(a) - (d). (3), (4), (6) and 7(1) and (5) of Law Reform (Fatal Accidents and Miscellaneous Provisions) (The Judicial Review Procedure and Fees) 2014 GN No. 324 of 2014 (the Rules). And it is accompanied by an affidavit sworn by the applicants and has statement of fact. Likewise respondent filed counter affidavit and reply to statement. From pleadings, the background to this application is this, applicant was a former teacher who claim to be unfairly terminated by the Teachers Service Commission (the TSC) the said termination was confirmed by President. What made him terminated is what claimed by respondent that applicant forged ordinary level certificate. Apart from the claim that applicant forged form four certificate, applicant has other certificates and or academic Page 2 of 7 recognition from various school and colleges and was employed as a teacher in 1996. During his tenure he was given a positive performance evaluation and was regarded as a competent teacher. In 1990 upon request by the commission, NECTA verify certificate with index number S0405/029 to be valid certificate but in January 2022 he was served

with a disciplinary notice from the TSC about allegations and was given 15 days to respond. His complain is found at paragraph 5 and 6 of the affidavit that he was not granted with proper hearing where he could present his evidence and he was not accorded right to cross examine any witness. Despite of the fact that he presented his certificate with verification from NECTA, TCS and the President did not consider it. Termination he is complaining caused him hardship as was deprived his salary and other benefits. He is seeking leave to file judicial review over the decision made by the TCS and the President. Respondents filed their joint counter affidavit in which they claim that allegations complained of by applicant were form his persona file in which he was found in possessing two form four certificates which were confirmed by NECTA that were forged. They further testified that applicant was accorded with fair hearing through TSC. Generally, they dispute the Page 3 of 7 relief sought and the grounds listed by the applicant that they may change nothing in the decision made. The application was disposed through oral submission whereby applicant was represented by Mr. Baraka Werema, advocates while respondents were represented by Mr. Anesius Kamugisha, State Attorney. When given the floor, State Attorney was brief that he has ample time to read application (affidavit and statement together with attachments) and find application was filed on time, in that application that applicant is intending to challenge the executive order which confirm termination of his employment while complaining of denial of fair hearing. To him those are triable issues and he did not find need to waste precious time of this court in arguments. Mr. Werema for applicant noted the submission and was waiting for this court order. I have to consider whether there is arguable point (s) registered by the applicants basing on the pleadings. As indicated from its heading, applicant is seeking leave to file a judicial review. Judicial review is a type of case falls under administrative law which deals with administrative actions and decisions of public or statutory authorities or bodies. See B.D. Chipeta, *Administrative Law in Tanzania: A Digest of Cases*, Page 4 of 7 Mkukina Nyota Publishers, 2009, at page xxvii. Again, in *John Mwombeki Byombalirwa vs The Regional Commissioner and Regional Police Commander* [1986] T.L.R. 73, at page 75 (paras E-F) it was held that; 'Judicial review is an important weapon in the hands of the judges of this Country by which an ordinary citizen can challenge an oppressive administrative action. And judicial review by means of prerogative orders (certiorari, prohibition and mandamus) is one of those effective ways employed to challenge administrative action..! In the matter at hand, applicant seeks to challenge decision of the TSG and the president. The office of the president is public office and the decision issued is administrative. I find the case is fit for judicial review. However, in granting leave to file judicial review, the applicant is supposed to adhere to the conditions set out under the law and which was analysed by the court of appeal in *Emma Bayo vs Minister for Labour and Youth Development and Two Others*, Civil Appeal No. 79 of 2012. In this case, the Court settled the conditions to be met for the application of this nature to be granted. It ruled that the court granting leave to apply for judicial review must; Page 5 of 7

- (1) Satisfy itself that the applicant has made an arguable case to justify filing of the main application.

- (2) Consider whether the applicant is within six months' limitation period within which to seek judicial review of the impugned decision.
- (3) Determine whether the applicant showed sufficient interest to be allowed to file main application. See also F. 3329 Cpl Buberwa Magayane and Another vs Ministry of Home Affairs, IPG and AG, Civil Appeal No. 119 of 2020 CAT. In the application at hand, respondents conceded that applicant has arguable case as he complaining of right to be heard. About time, it was noted that the application as filed within prescribed time. I am aware that application for leave is the process intends to enable court to eliminate and exclude frivolous or vexatious application which would appear to be an abuse of court process. It is only granted when applicant has a fit case for consideration. I am further aware that at this stage while exercising its discretion in determining issue of leave, this court is not expected to consider the main application as that will amount to over stepping. From analysis and submission by respondent above, I find there is an arguable point in the application specifically on the complained issue of Page 6 of 7 right to be heard. Applicant to exercise this order within 30 days from the date of this ruling. It is so ordered. DATED at MUSOMA this 12th February, 2025 M. L. KOMBA Judge Page 7 of 7

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