

TANZANIA / JUDGMENT

PILI SELEMANI MWINYIRUKA

COURT
TANZLIIDECIDED
31 July 2023

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA DODOMA SUB - REGISTRY AT DODOMA MISC. CIVIL APPLICATION NO. 26885/2023 IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR PREROGATIVE ORDER OF CERTIORARI AND MANDAMUS AND IN THE MATTER TO CHALLENGE THE LETTER BEARING THE DECISION OF DODOMA CITY DIRECTOR OF 31/7/2023 IN DENYING THE APPLICANT OF THE BUILDING PERMIT AND AUTHORIZE ILLEGAL TAKING OVER OF PLOT NO. 45 BLOCK "5" IN MADUKANI WITHIN DODOMA CITY COUNCIL BETWEEN PILI SELEMAN MWINYIRUNGA..... APPLICANT VERSUS DODOMA CITY COUNCIL THE ATTORNEY GENERAL RESPONDENTS

RULING

1CP July, 2024 HASSAN, J. The applicant has filed this application through chamber summons in terms of section 18(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 RE 2019] and Rule 5(1), 5(4) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN 324 of 2014 seeking for prayers thus:-

- a) That, this honourable court be please dispense with requirement o f notice o f not less than ninety days o f intention to sue as the respondents after being served with the said notice are in process o f taking over the land and alter use o f the land contrary to law and without considering that applicant was declared the owner by the court o f competentjurisdiction.
- b) That, this honourable court be pleased to grant leave to the applicant herein to file an application for certiorari and mandamus to quash, set aside and compel the Dodoma City Director's decision o f taking over the applicants piece o f land in the above location. This exparte application is supported by an affidavit sworn by Mr. Samwel Mcharo, the learned counsel for the applicant. Before this application was set for hearing, the applicant prayed to withdraw the 1st limb of the application, that is the prayer to dispense with the requirement of 90 days notice to sue the government since the notice had already been served to the respondents and had also matured. Thus, 2 the court granted the prayer and as well expunged paragraph 9 of the applicant's affidavit. When the exparteapplication came for hearing, the applicant was represented by Mr. Samwel Mcharo, learned counsel. The matter was ordered to be proceeded by way of written submissions. The applicant complied to the order of preference in filing his written submission. Submitting in support of the

application, the applicant's learned counsel adopted his affidavit to form part of the submission in support of the application. He added that, the applicant is the lawful owner of the land to wit; Plot No. 45 Block 5 Madukani Area within Dodoma City Council. That, in 2012 a dispute between the applicant and the defunct Capital City Development Authority (CDA), now Dodoma City Council, the 1st respondent arose which led to Land Case no. 36 of 2012 which was at the DLHT for Dodoma at Dodoma. That, the dispute was due to the decision of the then Capital City Development Authority (CDA) informing the applicant that her ownership in the suit land was cancelled and the land had been taken off for public interest. That, the DLHT declared the applicant to be the lawful owner of the suit land and the purported cancellation by the CDA was declared a nullity and illegal. The learned counsel went on submitting that, after that 3 decision the CDA filled a case in the High Court of Dodoma, Miscellaneous Land Application No. 58 of 2015 (annexture P-1 to the affidavit) so as to challenge the decision but the case was dismissed. That, the applicant then successfully filed for execution against the respondents in the trial Tribunal vide Miscellaneous Application No. 36 of 2015. That, the applicant then made follow ups to the CDA now the 1st respondent so as to obtain the building permit to no avail. That, surprisingly, on the 31st day of July, 2023 the applicant received a letter from the 1st respondent with reference number HJD/LD/858/60 informing her that the suit land has been taken off by Dodoma City Council through "Kamati ya Fedha na Uongozi" for public interest according to the program for developing the city of 1978, the decision made through a meeting held on the 20th day of July, 2023 as per annexture P-2 of the affidavit. The learned counsel submitted further that, the said decision has shown absolute negligence and lack of respect to the Rule of Law since the court has already nullified that decision and no appeal has ever been lodged by the respondent since then to the present. He submitted that, it is trite law that at this stage of application for leave to apply for prerogative orders, the applicant is required to show 4 interest in applying for orders as it was laid down in Emma Bayo VS The Minister for Labour and Youths development & Others, Civil Appeal No. 79 of 2012 in which the court restated its decision in Attorney General Vs Wilfred Onyango @ Dadii & 11 Others, Criminal Appeal No. 276 of 2006 (Unreported). The applicant's learned counsel added that the decision by the director of the 1st respondent in denying the applicant of the building permit and authorize illegal taking over of plot No. 45 Block "5" in Madukani Area within Dodoma City Council contravenes Rule of Law and principles of natural justice since the applicant was not heard prior to the decision and that the 1st respondent has not taken into account the decision of the court which declared the applicant the owner of the plot land. That, the authority to dispense justice in the United republic of Tanzania is vested to the Judiciary as per the provisions of Article 107A

- (1) of the Constitution of The United Republic of Tanzania of 1977 (as amended) Cap 2, [R. E 2002]. He also submitted that the applicant was declared the lawful owner against the defunct CDA through Land Case No. 36 of 2012 which was tried and determined by the DLHT for Dodoma at Dodoma. The said decision was executed as explained and is still intact to date. Thus, the 5 letter from the 1st Respondent with Reference No. HJD/LD/858/60 which

informed her that the land is taken off for public interest amounts to illegality. The applicant finalized her submissions by arguing that she has shown sufficient interest in the application at hand and if the prayers are not granted it shall cause injurious and incurable loss to her and her family as they are deprived of their right to fair hearing, right to own and enjoy the fruits of their land. Thus, the applicant prayed the court to grant leave to the applicant herein to file an application for certiorari and mandamus. From the applicant's pleadings and written submission, the major issue for determination is whether the application finds merits. The law directs that an application for prerogative orders in the High Court must be preceded with an application for leave, which if granted will be followed by the main application for the prerogative orders. This was the position in the decision of the Court of Appeal in, Attorney General V. Wilfred Onyango Mganyi @ Dadii and 11 Others, Criminal Appeal No. 276 of 2006 (unreported). However, the criteria for granting leave for judicial review as submitted by the applicant are also underscored in the case of 6 Emma Bayo V Minister for Labour and Youth Development & 2 (Supra) which held, inter alia, thus; "At the stage of leave the High Court is also required to consider whether the applicant is within the six months limitation period within which to seek a judicial review of the decision of a tribunal subordinate to the High Court. At the leave stage is where 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." Time limit for applying prerogative orders of certiorari and mandamus is provided for under Rule 6 of Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN 324 of 2014 to be 6 months, thus; "6. The leave to apply for judicial review shall not be granted unless the application for leave is made within six 7 months after the date of the proceedings, act or omission to which the application for leave relates." In the instant case, when ascertaining whether this application for leave to apply for prerogative orders of certiorari and mandamus is within time, I have gone through the applicant's chamber application, along with its annexures; the 1st respondent's alleged cancellation letter was issued on the 31st day of July, 2023. Then, the applicant lodged this application on the 6th day of November, 2023 that is 3 months later, thus within timeline for filing the application at hand. Now coming to the other criteria as to whether the applicant has a sufficient interest to be allowed to bring the main application. It is alleged by the applicant through her learned counsel that she is the owner of the suit land as alleged. Along with the affidavit, the applicant has attached the DLHT for Dodoma's decision declaring the applicant to be the occupier of the suit land. The applicant also alleged to have been deprived her right to fair hearing for not being involved in the decision making for the alleged cancellation of her right of occupancy. To support that, she attached the said letter to form part of her affidavit. Having considered the aforementioned reasons, I am of the position that, the applicant's 8 allegations deserve a chance to be heard and determined by the court for it to meet the ends of justice. That said, basing on the applicant's reasons the same undoubtably suffices to hold that the applicant has made out a case, prima facie to warrant her leave to

file the substantive application for prerogative orders. Consequently, I hereby grant the applicant leave to apply for an order of Certiorari and Mandamus to challenge the 1st respondent's decision. No order as to costs. It is so ordered. 9

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlil.org/media/judgment/314468/source_file/33190c8abf56ffc8/PILI_SELEMANI_MWINYIRUKA.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/pili-seleman-mwinyirunga-v-dodoma-city-council-Certiorari-tanzlil-2023--6a3ea5243b1caa91298199b9

Prepared on 14 October 2026 · Esheria