

TANZANIA / JUDGMENT

SHANI YAHAYA SHAYO 2

COURT
TANZLIIDECIDED
28 February 2025

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM SUB-REGISTRY) AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 30146 OF 2024 IN THE MATTER OF AN APPLICATION FOR
LEAVE TO APPLY FOR PREROGATIVE ORDERS OF CERTIORARI AND MANDAMUS AND THE
MATTER OF THE LAW REFORM (FATAL ACCIDENTS MISCELLANEOUS PROVISION) ACT [CAP.
310 R. E. 2019] AND IN THE MATTER OF THE DECISION OF THE CHIEF SECRETARY,
PRESIDENT'S OFFICE STATE HOUSE CONFIRMING THE DECISION OF THE SECRETARY, PUBLIC
SERVICE COMMISSION, UNFAIRLY TERMINATING THE APPLICANT FROM EMPLOYMENT
BETWEEN SHANI YAHAYA PAULO APPLICANT VERSUS CHIEF
COURT ADMINISTRATOR 1ST RESPONDENT SECRETARY, PUBLIC
SERVICE COMMISSION..... 2ND RESPONDENT THE CHIEF SECRETARY, PRESIDENT'S
OFFICE, STATE HOUSE 3RD RESPONDENT THE
HONORABLE ATTORNEY GENERAL..... 4TH RESPONDENT

RULING

25th & 28th February, 2025 BWEGOGGE, J.: The aforementioned applicant instituted an application herein praying for the orders, among others: 1

1. An order of certiorari to be issued by this Court to quash the decision of the 1st respondent and subsequent decisions made thereafter including the decision of Her Excellency, the President of the United Republic of Tanzania made on the 18th June, 2024.
2. Order of mandamus to compel the 1st respondent to reinstate the applicant to her employment position she held before the unlawful termination. The application is brought under section 2(3) of the Judicature and Application of Laws Act Cap 358 RE 2002; section 17(2) 18 (1)19(1) and
- (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act Cap 310 RE 2002 and 5 and 7(2) and 95 of the Civil Procedure Code [Cap. 33 R.E 2002]; and supported by the affidavit of the applicant herein. In tandem with filling the counter affidavit, the respondents herein raised preliminary objections on point of law as follows: -
 1. The application contravenes rule 5 (1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 GN NO. 324 of 2014 which prohibits an application for judicial review to be made unless a leave to file such application

has been granted by the court. At the hearing of the objection revisited above, the applicant appeared in person while the respondents were represented by Ms. Kause Kilonzo, learned state attorney. In substantiating the objection raised herein, Ms Kilonzo argued that the provisions of rule 5 (1) of The Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 [Government Notice 324 of 2014] instructs that any application for judicial review brought in court must be preceded by the application for grant of leave by this court. To the contrary, the application for judicial review filed in this court has not complied with the mandatory provision of the law mentioned above as the prayers made in the chamber summons are for grant of an order for certiorari against the 1st and 3rd respondent and the order for mandamus constraining the 1st respondent to reinstate the applicant to his employment of which are reliefs granted in proceedings for judicial review. Further, the counsel argued that the application herein purports to have been brought under section 2(2) of the Judicature and Application of Laws Act [Cap. 359 R.E. 2019] read together with the provisions under sections 17(2), 18(1) and 19(1) of the Law Reform Fatal Accidents and Miscellaneous Provision Act [Cap. 310 R.E 2019]; and sections 5 & 7 (2) and 95 of the Civil Procedure Code [Cap. 33 R.E. 2019]. Thus, it is apparent that the law invoked by the applicant, specifically the provisions under the Law Reform (Fatal Accidents and Miscellaneous Provision) Act, conforms to the application for prerogative orders not leave of this court to file application for judicial review. 3 Moreso, the counsel opined that though some of the provisions mentioned above refer to the application for leave, the applicant doesn't seek leave of this court but prerogative orders. In tandem with the above, the counsel enlightened this court that previously, the applicant herein filed an application for review in this court which was struck out on 21/11/2024 based on the same anomaly raised herein. And the applicant conceded to this fact in her supporting affidavit. However, until this very date, this court has not yet granted leave to the applicant to file an application for prerogative writs. On the above premise, the counsel prayed this matter to be struck out. In reply, the applicant contended that the objection without merit for ground that the chamber summons herein specifically indicates that the application is for grant of leave to lodge an application for judicial review. And, the applicant opined that the application herein was brought in compliance with the law; hence, fit to be heard and determined by this court. The applicant summed up her submission reiterating that the objection is unfounded and; hence, should be overruled. 4 In rejoinder, the respondent's counsel maintained her previous stance and argued that admittedly, the pleading lodged in this court by the applicant bears citation that the application herein is for grant of leave to file judicial review in compliance with the format set by law under the 1st schedule to the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules of 2014. However, some of the provisions of law cited in the chamber summons don't tally with the provision of law for grant of leave. Moreso, the prayers made thereunder are not prayers for grant of leave but prerogative writs. Hence, the counsel opined that the application offends the procedural rules; hence, liable to be struck out. The question for determination is whether the preliminary objection raised by the respondent has substance in law. In substance, the respondents allege that the application herein violates the

provisions of rule 5(1) Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules 2014 for want of leave sought and granted by this court prior to the filing of the application. I find it pertinent to reproduce the said provision in verbatim as hereunder: - 5 “Section 5 (1); An application for judicial review shall not be made unless a leave to file such application has been granted by the court in accordance with these Rules. The above revisited provision is clear needing no further interpolation. Suffice it to say that the law requires that before filing an application for judicial review, the applicant should seek and obtain leave of this court to that effect. Needless to reiterate that the applicant has not sought and granted leave to petition for prerogative writs sought herein. The respondent contended that the chamber summons herein specifically indicates that the application is for grant of leave to lodge an application for judicial review. Admittedly, the citation on the chamber application filed hereto depicts that this matter is an application for leave to apply for prerogative orders of certiorari and mandamus. Conversely, as depicted by the prayers made in the chamber application aforementioned, the applicant prays for two main prayers namely; one, grant of certiorari order to quash the decision of the 1st respondent for terminating the applicant from employment and subsequent decisions made thereafter including the decision of the Her Excellency the President of the United Republic of Tanzania made on the 18.06.2024; two, grant of mandamus order constraining the 1st respondent to reinstate the applicant to her employment of which are reliefs granted in proceedings for judicial review. 6 Therefore, I am constrained to agree with the respondent’s counsel in that though the pleadings lodged in this bear wording to the effect that the application herein is for grant of leave to file judicial review, still the prayer made thereunder are for grant of the prerogative writs. In view of the foregoing, I find the preliminary objection advanced by the respondents herein meritorious. Thus, I am constrained to sustain the objection, as I hereby do. Consequently, the application herein is hereby struck out for being incompetent before this court. So ordered. DATED at DAR ES SALAAM this 28th February, 2025. O. F. BWEGOGUE JUDGE 7

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Prepared on 13 October 2026 · Esheria