

TANZANIA / JUDGMENT

STEVEN KITALE V TLS 2 OTHERS

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TANZLIIDECIDED
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF MWANZA AT MWANZA MISCELLANEOUS CAUSE NO. 20248 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 OF THE LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) (JUDICIAL REVIEW PROCEDURE AND FEES) RULES, 2014, G.N. No. 324 of 2014. BETWEEN STEVEN KITALE CLEOPHACE.....
APPLICANT AND THE TANGANYIKA LAW SOCIETY (TLS)..... 1st RESPONDENT
SECRETARIAT, TANGANYIKA LAW SOCIETY..... 2nd RESPONDENT THE ATTORNEY
GENERAL..... 3rd RESPONDENT

RULING

30/8/2024 & 13/9/2024 ROBERT, J:- This ruling addresses the preliminary objections raised by the Tanganyika Law Society (TLS) and its Secretariat, the 1st and 2nd respondents respectively, in an application filed by the applicant, Steven Kitale Cleophace, seeking leave i to apply for prerogative orders of mandamus and certiorari against the Tanganyika Law Society (TLS), its Secretariat, and the Attorney General, the 3rd respondent. The applicant is a former Zonal Leader of the TLS for the Lake Zone, a position he held until 31st July 2024, when new elections were conducted by the TLS. Dissatisfied with the manner in which the TLS Secretariat acted without the necessary authority by a issuing a Notice for the 2024 Lake Zone Annual Meeting and Election and organizing a meeting and election without the prior approval of the Zonal Executive Committee (ExCom) as required by the law, the applicant raised concerns regarding the irregularities of the election process in the Lake Zone, specifically challenging the notice issued for the Zonal Executive Committee (exCom) meeting. On 2nd August 2024, the applicant sent an email to several TLS authorities, including the TLS President, the Governing Council, the Electoral Committee, the Electroal Appeals Committee, the Executive Director and the members of the ExCom Lake Zone, requesting an investigation into the election process. The email outlined the irregularities in the lection process and the unauthorized actions of the individuals who proceeded with the meeting and the election. He received a dismissive response, which he interpreted as the final word from the 2 TLS, prompting him to seek judicial review. The applicant now seeks mandamus to compel the convening of a proper Zonal Executive Committee meeting and certiorari to quash the notice issued by the 2nd respondent. However, before the

court could hear the application on its merits, the 1st and 2nd respondents raised two preliminary objections. The objections are as follows:

1. That the application is incompetent for including the 2nd respondent (TLS Secretariat), which is not a legal entity capable of being sued.
2. That the application is premature, as the applicant has not exhausted local remedies available within the Tanganyika Law Society (TLS) before seeking judicial intervention. At the hearing of the preliminary objections, the applicant was represented by learned counsel, Mr. Godfrey Mujuni Basasingoye, Ms. Esther Tuvave, Mr. Erick Mutta, and Mr. Gibson Ishengoma. The learned counsel for the 1st and 2nd respondents was Mr. Leonard Elias Magwayega, while the 3rd respondent was represented by Mr. Lameck Merumba, Senior State Attorney. Highlighting on the first point of preliminary objection, Counsel for the respondents, Mr. Magwayega, argued that the 2nd respondent, the TLS Secretariat, is not a legal entity capable of suing or being sued in its own 3 capacity. Citing Section 19(1) of the Tanganyika Law Society Act, Cap. 307 R.E. 2019 (as amended by the Written Laws Miscellaneous Amendment Act, 2020), he argued that, the Secretariat is merely an organ responsible for managing the TLS's day-to-day affairs. He emphasized that Section 3 of the Act confers legal personality on the Tanganyika Law Society (TLS) itself, making the TLS the appropriate party to be sued. The law does not extend this capacity to the TLS Secretariat. Therefore, the inclusion of the TLS Secretariat as the 2nd respondent is improper, and the application should be struck out for misjoinder. In response, the applicant, represented by Mr. Basasingoye, argued that the 2nd respondent had been sued based on its involvement in issuing the notice that the applicant seeks to challenge. He contended that the TLS Secretariat is an empowered organ under the TLS framework, and as such, its actions are subject to judicial review. He maintained further that, the orders sought in the application, specifically certiorari and mandamus, directly involve the Secretariat's activities, making it a necessary party. The applicant submitted that the TLS Secretariat issued the notice under Regulation 10(1) of the Tanganyika Law Society (Meetings) Regulations, G.N. No. 523 of 2020, and as such, it has legal standing in this context. 4 Regarding the second preliminary objection, Mr. Magwayega submitted that the applicant had not exhausted the internal remedies available within the TLS before approaching the court. He referenced Regulation 3 of the Tanganyika Law Society (Elections) Regulations, G.N. No. 598 of 2022, which establishes the Electoral Committee, tasked with hearing complaints related to election irregularities. Further, Regulation 6 provides for an Electoral Appeals Committee to hear appeals from decisions of the Electoral Committee. Mr. Magwayega argued that the applicant failed to file a formal complaint with the relevant committees and, instead, sent an informal email to the TLS President and other authorities. He contended that this does not fulfill the requirement to exhaust internal remedies, citing the case of Hekima Mwasipu & Others v. Tanganyika Law Society & Others, Misc. Cause No. 2 of 2023, where the court held that failure to exhaust internal remedies rendered the application premature. He also referred to Tanzania Electric Supply Company Limited v. The Attorney General & Others, Civil Application No. 54 of 2019, to emphasize the importance of exhausting local remedies.

In response, Mr. Erick Mutta, for the applicant, argued that the application was not based on election matters but rather on the issuance of a notice for the Zonal Executive Committee meeting. He contended further that the internal 5 remedies outlined in the TLS Elections Regulations do not apply to the applicant, as he was not a nominee, candidate, or agent, as per Regulation 50(1). Additionally, the applicant submitted that he had attempted to exhaust internal remedies by reaching out to the TLS President and others via email, but the response he received indicated a lack of further recourse. The applicant argued that this should be regarded as a final decision within the TLS, allowing him to seek judicial review. Starting with the first objection on the alleged misjoinder of the 2nd Respondent, the Court is aware that the legal status of the TLS Secretariat is governed by Section 19(1) of the Tanganyika Law Society Act, which clearly outlines that the Secretariat is an administrative arm of the TLS. It is responsible for implementing the decisions of the TLS Council and managing the society's daily affairs. However, the Act does not confer independent legal status on the Secretariat. Section 3 of the Act vests the legal capacity to sue and be sued solely in the TLS, not its organs. While the applicant argues that the Secretariat played a crucial role in issuing the contested notice, it is evident that such actions are performed under the authority of the TLS as a corporate entity. As such, the proper party to be sued in this matter is the TLS itself, not its administrative arm. 6 Accordingly, the 2nd respondent is improperly joined in this matter, and is hereby struck out from the proceedings. The second point of objection contends that the application was prematurely filed and invites the Court to determine whether the applicant exhausted the internal remedies available within the TLS before filing this application. As established in *Hekima Mwasipu & Others v. Tanganyika Law Society & Others* (2023), where internal remedies are available, an applicant must exhaust them before seeking judicial review. In this case, the Tanganyika Law Society (Elections) Regulations, 2022 provide a clear framework for addressing election-related grievances through the Electoral Committee and Electoral Appeals Committee. While the applicant claims that his complaint is not directly related to the election, the facts and reliefs sought demonstrate otherwise. The primary issue raised by the applicant relates to the notice for the 2024 lake zone annual meeting and election, and the relief sought includes quashing the said notice. Paragraphs 6, 7, 8, 10, 11, and 12 of the applicant's affidavit reference election irregularities, and the reliefs requested seek to invalidate actions that are fundamentally tied to the election process. 7 Further, Regulation 5(d) of the TLS (Elections) Regulations clearly outlines that any objections concerning elections must first be brought before the Electoral Committee. The applicant, however, bypassed this formal procedure and instead chose to send an informal email. This email, though directed to key officials, does not comply with the formal process outlined in the Regulations. In *TANESCO v. Attorney General*, the court underscored the importance of adhering to internal mechanisms before seeking judicial intervention. An email, lacking the necessary formalities and addressed to various parties rather than the Electoral Committee, cannot be considered an adequate pursuit of internal remedies. The applicant was required to formally engage the Electoral Committee to address his election-related grievances. By failing to do so, this application is premature, as it has not met the prerequisite of exhausting all

available remedies within the TLS framework. The applicant further contended that he was not a nominee, candidate, or agent in the Zonal Executive Committee elections and, as such, was not bound by the internal electoral procedures outlined in Regulation 50(1) of the TLS Elections Regulations. This regulation provides that nominees, candidates, and 8 their agents may appeal to the Electoral Appeals Committee within three days of the announcement of election results. Mr. Erick Mutta argued that since he did not fit into any of these categories, he was not required to exhaust the internal remedies provided for election participants, and thus, his pursuit of judicial review was procedurally appropriate. While it is true that Regulation 50(1) specifically refers to nominees, candidates, and agents as persons eligible to appeal to the Electoral Appeals Committee, this does not imply that non-candidates are exempt from following the internal electoral procedures set out in the TLS Elections Regulations. The applicant's argument focuses solely on the appeals process outlined in Regulation 50(1) but overlooks the broader scope of the regulations, particularly the mandate of the Electoral Committee under Regulation 5(d). Regulation 5(d) of the TLS (Elections) Regulations provides that the Electoral Committee has the power to hear and determine all objections related to the election process, including any grievances arising from election notices, and other election-related issues. This regulation is not limited to nominees, candidates, or agents but extends to any member of the TLS who raises concerns regarding the election process. The applicant's complaints about the 9 Zonal Executive Committee election, including the issuance of the election notice, squarely fall within this provision. Therefore, even though the applicant was not a candidate, nominee, or agent, his objections concerning the election notice and process were clearly election-related and should have been formally presented to the Electoral Committee. By arguing that Regulation 50(1) does not apply to him, the applicant attempts to bypass the comprehensive framework established to resolve election disputes. The regulatory framework is designed to ensure that all election-related grievances are first addressed within the internal mechanisms before judicial intervention is sought, regardless of the status of the complainant. As such, this application is premature, and leave for judicial review cannot be entertained until all local remedies have been exhausted. Consequently, the application is struck out for being premature, as the applicant has not exhausted internal remedies within the Tanganyika Law Society. I give no order as to costs, considering that the matter involves important issues concerning the governance of professional bodies, such as the Tanganyika Law Society (TLS), which serves the broader public interest. It is in 10 the interest of justice that no party should be penalized with costs in this instance. It is so ordered. 11

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