

TANZANIA / JUDGMENT

Steven Kitale vs

COURT
TANZLIIDECIDED
3 April 2025

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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.17558 OF 2024 IN THE MATTER OF APPLICATION FOR PREROGATIVE 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, 2014. [G.N.NO324 OF 2014] IN THE MATTER OF THE TANGANYIKA LAW SOCIETY ACT CAP. 307 R.E 2002; IN THE MATTER OF TANGANYIKA LAW SOCIETY (COUNCIL) REGULATIONS, GN NO. 599 OF 2022. IN THE MATTER OF AN APPLICATION TO CHALLENGE THE DECISION OF THE EXECUTIVE DIRECTOR AND THE ACTION OF THE GOVERNING COUNCIL THAT DENIED ACCESS AND PROVISION TO THE REQUESTED DOCUMENTS BETWEEN STEVEN KITALE CLEOPHACE
..... APPLICANT AND THE TANGANYIKA LAW
SOCIETY(TLS) 1ST RESPONDENT EXECUTIVE DIRECTOR TANGANYIKA LAW
SOCIETY2ND RESPONDENT THE GOVERNING COUNCIL OF TANGANYIKA LAW
SOCIETY3RD RESPONDENT THE HON. ATTORNEY
GENERAL 4TH RESPONDENT

RULING

26 March & 3rd April 2025 CHUMA, J. The applicant within the context of this application is a member of the Tanganyika Law Society and the Governing Council of Tanganyika Law 1 Society representing the Lake Zone. On 5 April 2024, he received a notice from the second respondent aimed at opening a discussion regarding the 10th Extraordinary Meeting of the Governing Council with an agenda proposing an alternative venue for the 2024 Annual General Meeting (AGM) and approval of the Institutional Annual Budget for 2024. Again, on 8 April 2024, the applicant received an AGM concept note which among other things specified a detailed proposal of AGM Fees intended to be collected from members for ensuring that the event was self-financed. The proposed fees were as follows: one, payment of TZS 329,646.00 for physical attendance and TZS 150,000.00 for online attendance if the AGM was to be held at the AICC Arusha with all items included; two, payment of TZS 192,185.00 for physical attendance and TZS 120,000.00 for online attendance if some items were outsourced at the AICC Arusha; and three, payment of TZS 118,767.00 for physical attendance and TZS 100,000.00 for online attendance if the AGM had to be held at the Jakaya Kikwete Convention Center. It was also proposed that funds

from online attendance fees would be allocated to cover transportation, daily subsistence allowance (DSA), and accommodation costs for official guests, presenters, members of the Governing Council (GC), and the Secretariat. 2 During the 10th Emergency Meeting, the 3rd respondent approved the proposal for the Annual General Meeting (AGM) to be held at the Jakaya Kikwete Convention Center, with registration fees set at TZS 118,767.00 for physical attendance and TZS 100,000.00 for online attendance. The budget incorporating these fees was approved, and the final budget was to be submitted to the Governing Council for verification of its implementation as approved. Before this submission, on June 7, 2024, the management proposed new AGM registration fees via email from the Corporate Secretary from TZS 118,767 to TZS 200,000 for physical attendance. This increase was not previously discussed or approved by the Governing Council and contradicted the budget that aimed to maintain low costs and financial accountability. The applicant and three other council members were quite uncomfortable with how the Society business was carried out. On June 7, 2024, the applicant and three other Council members wrote a letter requesting access to both unclassified and classified information and documents from the Society's Senior Management Team and the Executive Director. Their concerns rested on the lack of transparency on the increase in registration fees and the legitimacy of the Electoral Committees as some members did not meet the required standards of good standing. 3 Responses from the Executive Director of the Tanganyika Law Society (TLS) did not satisfy the applicant. His efforts to have his concerns addressed by the President of TLS were also unfruitful thus, he preferred the current application which is made under section 17 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act. [CAP. 310 R.E. 2019] and Rule 4, 8 (1), (a), (b), (2), (3), (5), and 9(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. [G.N. N 324 OF 2014]). The applicant has moved this Court to grant the following orders:

- (i) An order of Mandamus compelling the Executive Director and the Governing Council of the Tanganyika Law Society to grant access to and provide the requested documents in accordance with Regulation 15(6) and (7) of the Tanganyika Law Society (Council) Regulations, 2022, and Section 28 of the Tanganyika Law Society Act, Cap. 307 R.E 2002, considering the Applicant has been unjustly denied access to these documents. (ii) An order of Certiorari quashing the decision and actions of the Executive Director and the Governing Council which have denied the applicant access to the requested documents, infringing upon the Applicant's rights as a member of the society to inspect such documents. (iii) Costs of this application be provided for. 4 (iv) Any other relief(s) that this Honorable Court may deem fit and just to grant The application is supported by a statement and an affidavit deposed by the applicant himself. The respondents through their joint counter affidavit have resisted the application. They contend that the applicant never requested access to classified and unclassified information and documents from the Society's Senior Management Team, and such request was denied. When the matter came up for hearing, Ms. Esther Kivave and Messrs. Mugabe Joseph, Mhagama Ernest, Mutta Erick, and Gibson Ishengoma, all learned counsel, appeared fending for the applicant. The first to three respondents enjoyed the services of Mr. Magwayega, learned counsel, and Mr. Lameck Merumba, learned Senior

State Attorney, represented the 4th respondent. Before all else, Mr. Magwayega intimated his intention, which was conceded by Mr. Merumba SSA, that they were not resisting the application but should be spared from costs. Mr. Mugabe welcomed such concession though with reservation by maintaining the prayer for costs. It must be noted at the outset that even with the respondent's concession to the application, the court is still duty-bound to examine whether the applicant has discharged his duty in establishing factors worth judicial review. Ahead of discussing the grounds on which the application is based, it is important to understand the cardinal rules governing judicial review and conditions under which writs of certiorari and mandamus may be issued. With this one, we are not sailing in virgin territory. In the case *Sanai Murumbe and Another V Muhere Chacha* [1990] T.L.R 54, the Court identified four principles that can be used to challenge a decision of public authority by way of judicial review, namely: illegality of the impugned decision, failure to observe the principles of natural justice and failure to act with procedural fairness, making a decision which is outrageous and defiance of logic or of accepted moral standards that no reasonable person who had applied his mind to it could have made such a decision and, the means employed by a decision-maker are no more than is reasonably necessary to achieve his or her legitimate aims. Also in *Jean- Bosco Ngendahimana V The University of Dar es Salaam (UDSM)* (Civil Appeal 304 of 2017) [2021] TZCA 3528 (20 December 2021), the Court expressed that certiorari and mandamus would lie against any persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially but act in excess of their legal authority. It held further that: 6 “It is also a peremptory principle of law that an authority which exercises its power within the ambit of the establishing statute is immune from judicial review provided that the exercise of its authority is done judicially in accordance with the rules of natural justice”. Regarding a writ of mandamus, the law is clear that it can be issued upon satisfaction of the following conditions: one, the applicant must have demanded performance and the respondents must have refused to perform, two, the respondents as public officers must have a public duty to perform imposed on them by statute or any other law but it should not be a duty owed solely to the state but should be a duty owed as well to the individual citizen, three, the public duty imposed should be imperative and not a discretionary one, four, the applicant must have a locus standi, that is, he must have sufficient interest in the matter he is applying for and five, there should be no other appropriate remedy available to the applicant. Akin conditions were expressed in the case of *John Mwombeki Byombalirwa V The Regional Commissioner and Regional Police Commander, Bukoba* [1987] T.L.R 73. As for an order of Certiorari, the law again is settled that it is grantable after the applicant successfully establishes the tribunal or authority acted without jurisdiction, exceeded its jurisdiction, or failed to comply with the rules of natural justice or the decision of a competent authority is so unreasonable that reasonable authority could have ever come to it or where there is an error of law on the face of the record. This was stressed in the case of *Rahel Mbuya V Minister for Labour and Youth Development and Another* (Civil Appeal 121 of 2005) [2008] TZCA 35 (14 May 2008), where the Court of Appeal had regard to the following conditions:

- (i) Certiorari will be issued for correcting errors of jurisdiction when an inferior Court or Tribunal acts without jurisdiction or in excess of it or fails to exercise it. (ii) Certiorari is issued when the Court or Tribunal acts illegally in the exercise of its jurisdiction, as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. (iii) In issuing the writ of certiorari the Court is not required to review findings of fact reached by the inferior Court or Tribunal, even if they are erroneous. (iv) A writ of certiorari could be issued to correct an error apparent on the face of the record. My analysis will therefore be guided by those legal principles. Starting with the writ of mandamus, the issue is whether the respondents denied the applicant access to the necessary documents hence offending section 28 of the Tanganyika Law Society Act, Cap. 307 (the TLS Act) and regulation 15(6) and (7) of the Tanganyika Law Society (Council) Regulations, 2022 (the Regulations). Under section 28, the law is clear that the Council has a general obligation to the members to make all the minutes available for inspection by any member of the Society at any reasonable time. The same thing is clarified under regulations 15 (6) and
- (7) of the Regulations that the Council members have complete access to the unclassified information or documents to the Society's Senior Management Team. However, in matters of classified information or documents, the Council members have access to the documents through or as per arrangement facilitated by the Executive Director. There is no doubt that through annexure Kitale 4, the applicant and his colleagues requested to the Executive Director of the Tanganyika Law Society (TLS) among many other things to be provided with copies of the minutes and resolutions of the Governing Council pertaining to the appointment of members of the Electoral Committee and the Electoral Appeals Committee to assure themselves that the decisions made followed legal procedures and that the election process was being carried out in accordance with the provisions of the law. Nevertheless, in her response 9 dated 11th June 2024 (Kitale 6), the Executive Director could not respond to anything regarding access to or provision with copies of the minutes and resolutions of the Governing Council relating to the appointment of members of the Electoral Committee. The applicant in paragraph 19 of the affidavit has also acknowledged that the response received from the Executive Director did not address the core issues related to transparency and clarity. This is what led to lodging a direct appeal to the President of TLS, emphasizing the urgent need for the documents. Under the circumstances, failure of the Director to respond to them/him or her advice that they should convey their complaints to the President of the Tanganyika Law Society (TLS) if they were not satisfied cannot be interpreted as a denial as per the dictate of the law and case laws herein above referred and thus constitute a ground deserving grant of a writ of mandamus. After noticing that there was an issue that had not been addressed, under normal circumstances, the applicant could have written to the Executive Director to provide a specific clarification or demand a response on the relevant issue. Since that did not happen and because their letter to the President of Tanganyika Law Society (TLS) went unanswered, it is clear that neither the Executive Director nor the President of Tanganyika Law Society (TLS) failed or refused to comply with the 10

mandatory requirements of section 29 of the Tanganyika Law Society (TLS) Act and regulation 15 (6) and (7) of the Regulations. The appeal to the President of Tanganyika Law Society (TLS) was therefore prematurely opted. On the second limb the applicant is also seeking an order of certiorari by quashing the decision and actions of the Executive Director and the Governing Council which have denied the applicant access to the requested documents. As it was held in *Rahel Mbuya V Minister for Labour and Youth Development and Another* (supra), an order of Certiorari may only be issued where the lower tribunal or authority acted without jurisdiction or failed to comply with the rules of natural justice. Equally the same, the writ of certiorari can be granted if a decision of a competent authority is so unreasonable that a reasonable authority could have ever come to it or where there is an error of law on the face of the record. In light of those principles, it is obvious that an order of certiorari cannot be issued unless there is an impugned decision from the relevant tribunal or authority. After reviewing the chamber summons as well as the affidavit in support of the application, it is clear that there is no decision made by the Executive Director of the Tanganyika Law Society (TLS) or the Governing Council calling for judicial review. Annexure Kitale 6 was simply a 11 communication from the Director where they were advised that if they needed further clarification, they should submit their complaints to the President of Tanganyika Law Society (TLS). Even if we are to assume that it was a decision, my critical review reveals that the applicant has failed to demonstrate how the authority (Director) acted without jurisdiction or failed to comply with the rules of natural justice. In addition, there is no evidence from the applicant establishing that the action taken by the Director was unreasonable. All of this considered together leads to only one conclusion that this application was prematurely preferred. In the spirit of the foregoing reasons, I dismiss the application for want of merit. Owing to the nature and circumstance of this application, I desist from making an order as to cost. I so order. DATED at MWANZA this 3th day of April, 2025. W. M. CHUMA JUDGE 12 Ruling delivered in court virtually in attendance of the applicant Mr. Kitale, Godfrey advocate for the applicant and Mr. Magwayega advocate for first to third respondents this 3rd day of April 2025. C. KISONGO DEPUTY REGISTRAR 13

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