

TANZANIA / JUDGMENT

STEVEN KITALE CLEOPHACE VS TLS AG

COURT
TANZLIIDECIDED
15 July 2024

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

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUB-REGISTRY OF MWANZA AT MWANZA MISCELLANEOUS CAUSE NO. 16018 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 LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) (JUDICIAL REVIEW PROCEDURE AND FEES) RULES, 2014 [G.N NO. 324 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: BETWEEN STEVEN KITALE CLEOPHACE APPLICANT AND THE TANGANYIKA LAW SOCIETY.....1st RESPONDENT EXECUTIVE DIRECTOR, TANGANYIKA LAW SOCIETY..... 2nd RESPONDENT THE GOVERNING COUNCIL OF TANGANYIKA LAW SOCIETY..... 3 rd RESPONDENT THE HON. ATTORNEY GENERAL..... 4th RESPONDENT

RULING

15th & 15th July, 2024 A. MATUMA, J. The applicant Steven Kitale Cleoplace is a member of Tanganyika Law Society and a member of the Governing Council of the society representing the lake zone. i The Society is now undergoing an election process to have its President and other leaders elected. The election is said to have been scheduled at the end of this month of July, 2024. The applicant and three other members of the Governing Council of the Society are aggrieved with the election process with several complaints but for the purposes of this application the major complaints are two;

- i. That the members of the Electoral committee are incompetent and unqualified to supervise the election in terms of the governing laws of the society. ii. That the election process has been designated to deny general members of the society to full participation in the election for sudden and unprocedural increasing of attendance fee to the Annual General Meeting in which the election shall be carried contrary to the agreed and prescribed fee which was duly passed by the 10th Emergency Meeting of the Governing Council. With these two major complaints for the purpose of this application, the applicant and his fellow three others namely Irene Mwakyusa (Governing Council from South zone), John J.R. Nyange (Governing Council from Mzizima zone) and Edward Heche Suguta (Member of the Governing Council

and Chairman of Association of initiated some queries and demands by writing to the Executive Director of the Society requesting her to supply them with relevant documents of the Governing council through which electoral committee members of the society were nominated and through which the Annual General meeting Fees were increased. According to the applicant, they were denied the requisite documents hence this application seeking leave for the applicant to file an application for judicial review for orders of;

- a. Mandamus to compel the 2nd and 3rd Respondents to provide the requested documents as mandated by 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.
- b. Certiorari to quash any decision or action by the Executive Director and the Governing Council that denied the provision of the requested documents.
- c. An order of interim injunctive relief to restrain the Annual General Meeting (AGM) and election process, including the activities of the electoral committee and the electoral Appeals committee, and to maintain the status quo pending the determination of the judicial review application. At the hearing of this application, the Applicant was represented by advocate Steven Makwega, Godfrey MjunPT-lartin Basasingohe and 18 other advocates making the convoy of twenty advocates whose names are reflected in the proceedings. The 1st ,2nd and 3rd Respondents were represented by Mr. David Shilatu and Mr. Hekima Mwasipu learned advocates. On the part of the 4th Respondent, there was presence of M/S Subira Mwandambo and Mr. Lameck Merumba learned Principal State Attorney and Senior State Attorney Respectively. Arguing for the application Mr. Basasingohe started to point out five grounds upon which leave to file judicial review application may be granted. He mentioned them to be; /' That the applicant must have sufficient interest in the matter. ii. That there must be an arguable case. Hi. That there must be a decision made of the complained matter, iv. That there must be exhaustion of local remedies.
- v. That the application must be made within six months from the date the action or decision complained. He made citation of an authority to that effect. Undisputably Mr. Mwasipu added the 6th ground as per other cited case law to be; vi. That the application must be made in good'faith. The learned advocates for the Applicant through the mouth of advocate Godfrey Mjuni Martin Basasingohe argued that all the six conditions have been met by the applicant. He started to take this court through the contents of the applicant's affidavit and the Statement accompanying such application. He argued that since the applicant was denied the requisite documents that was a clear violation of statutory duty by the 2nd Respondent hence an arguable case because such denial has made inconveniences to the Applicant from executing his statutory duties as a member of both the Governing council and Tanganyika Law Society. He also argued that sufficient interest in the matter has been demonstrated and established by the applicant not only for himself but also for interests of other advocates he represents as a Zonal leader. He finally called this court to grant an interim injunction order restraining the process towards the Annual General Meeting of this year 2024 because there are hidden documents relating to what will take place in such

meeting. He thus prayed for an order maintaining status quo pending determination of the intended application. Some other arguments were made as if I was hearing the judicial Review itself and for that matter, I avoid reproducing them and or make decision on it. According to the applicant's affidavit and the Statement, on the 10th Emergency meeting of the Governing Council of the Tanganyika Law Society set out registration fees for the Annual General Meeting at Tshs. 118,767 for physical attendance and Tshs. 100,000/= for online participation but for undisclosed manner and reasons it came to the knowledge of the applicant that the proposed registration fee for the Coming Annual General Meeting is Tshs. 200,000/= for physical attendance which was not discussed and or approved by the governing council in which he is personally a member. The applicant's advocates also sailed this court to the affidavit and Statement of the Applicant to the effect that the applicant who has sufficient interest in the matter as a member of the Governing Council and a Zonal leader of Lake Zone is charged with the oversight and Governance responsibilities of TLS. As such he requested records relating to the establishment and appointment of the Electoral Committee and Electoral Appeals Committee members to perform his oversight responsibilities but he was completely denied such documents. They finally argued that the electoral process is tainted with illegalities and the only available remedy is the court's intervention by way of judicial review hence leave be granted. In the meantime, that an interim injunctive relief be granted to restrain the AGM and election process including the activities of the Electoral committee and Electoral Appeals committee pending the determination of the judicial review application to prevent further irreparable harm and ensure proper governance within the Tanganyika Law Society. On their part, the 1st, 2nd and 3rd Respondents, Mr. David Shilatu learned advocate started to address the court to the effect that no any sufficient interest has been established by the applicant and that even a premafacie case is not made to warrant the grant of this application. The learned advocate then argued for the incompetence of the affidavit of the applicant of which has already been determined in the ruling which determined the preliminary objection. I will not therefore determine what has already been determined between the same parties and in the same matter. Then it was Mr. Hekima Mwasipu who took the floor but again reiterated what he made during the hearing of the preliminary objection and overruled. He finally prayed for this court to dismiss this application with costs. Mr. Lameck Merumba learned Senior State Attorney supporting the Counsels for the 1st, 2nd and 3rd Respondents argued that the applicant did not exhaust other remedies and there is no any meaningful decision to be challenged in the judicial review process. All these were as well dealt fully in the preliminary objection and cannot exercise my mind as already stated Supra. Having heard the parties for and against this application, I am of the firm finding that the applicant has established an arguable case to be determined in a judicial review process. This is because, in accordance with the laws governing the Tanganyika Law Society, the election process is a legally governed activity. The members of both the electoral committee and those of the Electoral Appeals Committee must be nominated in accordance to the relevant laws and relevant qualifications but in the instant application, the applicant has deposed and argued that the members of the electoral committee and those of the Electoral Appeals Committee have been nominated contrary to

the governing law because he himself and the three other members were not involved in the nomination of such members of the electoral committees in accordance to the governing law as members of the Governing Council. I am convinced and satisfied that the applicant made all necessary efforts to have the relevant documents for him to scrutinise them so that he could take the requisite step or steps but he was denied such documents. In the circumstances, it is imperative that leave be granted for the applicant to institute a judicial review application for the parties to be heard on the 8 legality or otherwise of the election process and the nomination of electoral members of the society. Not only that but also attendance of the members to the Annual General Meeting has to be proceeded by payment of registration fees. The applicant avers that as a member of the Governing Council, he did not see or participate in any meeting proposing the increase of the registration fees to Tshs. 200,000/= for physical attendance and that the increase of such fees is likely to hinder the physical participation of members to the AGM. That is sufficient ground to grant this application so that the judicial review application is filed for the court to determine whether the proposal to increase the alleged annual general meeting fees was reached in accordance to the due process of the Governing Council of the Society. In relation to whether or not this application has been made in good faith, I find that the answer thereof is given by the 2nd Respondent herself in her letter to the Applicant annexure Kitale 2. Just the 2nd Paragraph after the title; JUHUDI ZA UWAZI NA UWAJIBIKAJI: ADA ZA USAJILI NA UTARATIBU WA UCHAGUZI WA TLS, the 2nd Respondent acknowledged and commented the good efforts which have always been taken by the applicant and the three others members of the council for the better running of the society. Just to quote; "Kwanza kabisa napenda kuwashukuru kwa juhudi zenu za mara kwa mara zinazo/enga kukijenga chama chetu. Nikiwa mkurugenzi wa chama chetu (TLS), natambua juhudi zenu na ninawapa pongezi kwa jambo jema mnalolifanya kwa mas/ahi mapana ya ustawi ya chama chetu na taa/uma ya uwaki/i kwa ujum/a" Finally in the last paragraph she made it clear; "Nawashukuru kwa kuende/ea kuweka mbe/e mas/ahi ya chama chetu na taa/uma yetu. Naimani kwa jitihadi zenu hizi chama kitazidi kusonga mbe/e" In that regard the executive Director of the Council (2nd Respondent) has given her testimony on the good character, intent and efforts about the Applicant and his fellows to be members who have always been fighting for the better future of the society (TLS). With these remarkable observations by the 2nd Respondent herself a senior manager or Director of the Society, who else can give negative comments to advocate Steven Kitale Cleoplace the Applicant herein and doubt his intent in this matter and even the intended application. I find Incfne. The arguments of bad o intent against the applicant by the Respondents' advocates have no substantive base and accordingly fired out. In that respect, I do hereby grant leave to the applicant for him to file the requisite judicial review application and direct that such application be filed within the prescribed time in law from the date of this ruling which is fourteen days. In relation to the interim injunctive relief restraining the AGM and election process including the activities of the two electoral committees of the Society, I refrain doing so on the reason that in the circumstances of the facts at hand, this is not the appropriate time. The interim injunctive order is sought pending the determinative of the judicial review application. Such application is however

not yet filed for want of leave which I have already granted Supra. Granting leave is not an order that the application upon which leave is granted must be filed. The applicant might at any time decline to file the requisite application despite of the granted leave. If that is to happen, it will be prejudicial to the respondents who are said to have started the election process. I am aware of the provisions of rule 5 (6) and rule 7 (5) of GN no. 324 of 2014 in which subsequent to the granting of leave the Judge has discretionary powers to order the stay of proceedings or grant the interim relief. Under the same provision i.e 5(6) supra the Judge depending on the circumstances of the matter may direct otherwise. In the circumstance, since the applicant is not necessitated to bring the Judicial Review Application immediate after the grant of the leave and that he may do so even at the last date, I am of the firm view that the interim injunctive order be sought in the application for judicial review itself when it is filed. In my view, that will be the appropriate time because the applicant shall be seeking a temporary injunction order pending the already filed matter and the presiding judge will be better positioned to scrutiny and determine in the circumstance of the facts in the application itself whether or not to grant the temporary injunction order. Temporary injunction orders for matters whose suits are not yet filed in court are normally granted as Mareva injunctions whereas, for some legal restraints such suits are to be filed in future after compliance to some other legal course and in the meantime the applicant is likely to suffer irreparable harm if the interim injunction order is not granted pending the filing and determination of the main suit. In the instant matter, there are some more weeks for the impugned election to be carried on and leave to apply for judicial review having been granted as herein above, the applicant has no any legal impediment to immediately file his application. Therefore, refraining from granting the interim injunctive relief shall not be prejudicial to the applicant because it is open for him to get it in the intended judicial review application itself. This is because if the application is immediately filed, it shall be filed before the complained AGM and election of the society and the application may be determined in due time for the rights of both parties. Having said so, I do hereby decline to grant the sought interim injunctive relief and direct the applicant to seek the same in the intended judicial review application if at the time of filing such application he shall still be considering that the interim relief is necessary. That shall serve the interests of both parties. I have therefore granted leave and declined to grant the interim relief. 13

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.tanzlii.org/media/judgment/313921/source_file/c44bbba6b6868671/STEVEN_KITALE_CLEOPHACE_VS_TLS__AG.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/steven-kitale-cleophace-vs-tls-ag-2024>

Prepared on 13 October 2026 · Esheria