

TANZANIA / JUDGMENT

MISC CIVIL CAUSE NO 1948 OF 2025 NEW

COURT
TANZLIIDECIDED
1 January 2025

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

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (MAIN REGISTRY) AT DODO MA MISCELLANEOUS CIVIL CAUSE No 1948 OF 2025 IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR PREROGATIVE ORDERS OF MANDUMUS AND PROHIBITION AND IN THE MATTER OF LAW REFORM (FATAL ACCIDENT AND MISCELLANEOUS PROVISIONS ACT (CAP.3010 R.E 2019] AND IN THE MATTER OF TENZI ANTHONY NYUNDULWA CHALLENGING THE LEGALITY OF THE ACT OF HER EXCELLENCE PRESIDENT DR SAMIA SULUHU HASSAN OF RECEIVING A LETTER OF RESIGNATION FROM HONORABLE DR PHILIP MPANGO RESIGNING HIS POSITION OF VICE PRESIDENT OF TANZANIA AND LET HIM CONTINUE TO SERVE THE OFFICE OF VICE PRESIDENT AT HER PLEASURE CONTRARY TO THE DICTATES OF THE CONSTITUTION OF UNITED REPUBLIC OF TANZANIA OF 1977 AS AMENDED TIMES TO TIMES. IN THE MATTER OF TENZI ANTHONY NYUNDULWA CHALLENGING THE ACTIONS OF HON DR PHILIP MPANGO OF CONTINUING ACTING AND SERVE AS VICE -PRESIDENT OF TANZANIA AFTER HE HAS CEASED TO HOLD HIS OFFICE BY VIRTUE OF HIS ACTION OF HANDING OVER A LETTER OF RESIGNATION BEFORE HER EXCELLENCE PRESIDENT SAMIA SULUHU HASSAN AS RESIGNATION STANDS AS SOON AS IT IS SUBMITTED BETWEEN TENZI ANTHONY NYUNDULWA..... APPLICANT AND HONOURABLE DR PHILIP MPANGO. .1ST RESPONDENT HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

RULING

5th & 7th FEBRUARY 2025 RUMISHA, J.: The Applicant, an Advocate and a public spirited citizen, is before this Court armed with a chamber summons supported by his own affidavit, seeking leave of this Court to present an application for prerogative orders. In his chamber summons, the Applicant seeks the following orders quoted verbatim'.

1. That this Honourable Court be pleased to grant leave to the applicant to file an application for judicial review for orders of declaration that the Office of Vice- President is Vacant pursuant to sub article (2),(c) of Article 50 of the Constitution of United Republic of Tanzania following the act of Honourable Dr. Philip Mpango of handing over a letter of resignation of his position of Vice-President to Her Excellency President Dr. Samia Suluhu Hassan.

2. Mandamus to compel Her Excellence President Samia Suluhu Hassan to appoint another person subject to the provisions of sub article 4 of Article 50 and Article 48 (2) of the Constitution of United Republic of Tanzania of 1977 as amended time to time.
3. Prohibitory Order against Honourable Dr. Philip Mpango, prohibiting him from continuing act as Vice-President and holding the Office of Vice-President as his resignation stood as soon as it was submitted to the President.
4. Costs of this application. The reasons upon which this application is premised are set out and are clearly discernible in the affidavit supporting the application. It is alleged that on 19 January 2025, while watching a live broadcast of the Special General Meeting of Chama Cha Mapinduzi on TBC, the Applicant heard Her Excellency President Dr Samia Suluhu Hassan publicly state that she had received a resignation letter from Hon. Dr Philip Mpango, the Vice President of the United Republic of Tanzania. It is further stated during the broadcast, the President mentioned that Dr Mpango 2 approached her in recent months, expressing his intention to step down. Although she had initially resisted his request, the Vice President went ahead and formally submitted his resignation letter the previous week, to which she had not yet responded. The Applicant states further that the President's action in accepting the Vice President's resignation letter but failing to officially declare the position vacant had resulted in the constitutional violations. He states further that this failure undermined the Constitution, leaving the Vice President's office occupied by an individual whose legal status is questionable. As a public spirited citizen and an advocate of the High Court, he felt personally affected by these infringements and believed he had a civic and legal duty to ensure that all actions comply with the Constitution and the rule of law. Thus, he filed the present application seeking the above mentioned orders. The application was heard ex parte, though in the presence of Mr. Chang'a, learned Principal State Attorney, as previously ordered. The Applicant did not have representation; he appeared in person. In support of the application, he submitted that the criteria for granting leave for judicial review were outlined in *Cheavo Juma Mshana v. Board of Trustees of Tanzania National Parks*, Misc. Civil Cause No. 7 of 2020, High Court Main Registry (Unreported). In this case, he submitted, the Court established four requirements. These requirements, he mentioned, are the existence of an arguable case, sufficient interest, timely filing, and the absence of an alternative remedy. In addressing the first criterion, the Applicant submitted that an arguable case existed regarding the resignation of the first Respondent. It was contended that the resignation took effect immediately upon the President's receipt of the resignation letter, contrary to the Respondent's claim that the Vice President remained in office. The Applicant asserted that the Vice President did not hold office at the pleasure of the President and had the right to resign at any time; thus, continued occupation of the office by the Vice President was unconstitutional, necessitating the Court's intervention. On the second and third criteria, the Applicant claimed sufficient interest in the matter, citing Article 26(2) of the Constitution, which grants every citizen the right to take legal action to protect the Constitution and the law. He further submitted that his affidavit had averred that he is a Tanzanian, a public spirited individual, and an advocate. Additionally, the application was

filed within the statutory six month period, as the first Respondent's resignation letter had been submitted a week before January 19, 2025, and the application was filed shortly thereafter. Regarding the fourth criterion, the Applicant contended that judicial review was the only available legal remedy, as the case involved challenging an administrative action. The Applicant emphasised that no counter affidavit had been filed by the Respondents to dispute the claims, justifying the need for leave to be granted. I would like to begin by commending the zeal exhibited by the Applicant in seeking to protect the Constitution. This is a civic duty imposed on every patriotic citizen, and such dedication is commendable. However, one thing needs to be made clear from the outset, there is no 4 counter affidavit in this matter because I ordered the same to be heard ex parte. Therefore, any argument premised on the absence of a counter affidavit is out of context. Further, I join hands with the Applicant. As rightly submitted, an application for leave to seek judicial review must satisfy specific minimum requirements. Our only point of departure, these grounds were not established in the case of *Cheavo Juma Mshana v. Board of Trustees of Tanzania National Parks* as I shall shortly demonstrate. Suffices to note that the grant of such leave is not automatic, as the Court entertains the application for leave to present a judicial review case only upon satisfaction of the required threshold. Unlike other causes of action, where an applicant may freely approach the Court to present a suit, the avenue for seeking judicial review is more restrictive. It is a special jurisdiction that requires the applicant to obtain leave from the High Court before the substantive consideration of the matter. This procedural safeguard ensures that only meritorious cases proceed to the judicial review stage, preventing frivolous or unsubstantiated claims from burdening the Court. The rationale behind these limitations is deeply rooted in the historical development of prerogative orders. Historically, these orders were issued by the King as he exercised his prerogative of dispensing justice. However, as the volume of cases surged, it became impractical for the King to preside over matters personally. Consequently, the responsibility shifted exclusively to the judges sitting in the King's Bench. The writs were originally intended to rectify individual wrongs suffered by subjects, serving as a means of ensuring justice within the realm. These orders were the exclusive i through the King's Bench to supervise and control inferior tribunals, administrative bodies, and public authorities. Over time, as legal systems evolved, the issuance of prerogative orders became subject to judicial discretion, necessitating a structured process that requires an applicant to obtain leave before proceeding with a substantive judicial review. This historical foundation underscores the special and supervisory nature of judicial review, distinguishing it from other forms of litigation. This historical context underpins the extraordinary nature of prerogative orders, necessitating procedural safeguards to prevent their abuse. The English case of *R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531 is relevant. In this case, the House of Lords emphasised that judicial review, which includes prerogative orders, is not an appeal but a review mechanism to ensure procedural propriety and the lawfulness of decisions made by public bodies. With the establishment of the High Court of Tanzania, pursuant to section 2 of the Judicature and Application of Laws Act, Cap 358, it inherited the powers to issue prerogative orders. However, the orders remain subject to the

procedural requirement of obtaining leave as provided by the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. The requirement of leave to obtain prerogative orders has a historical foundation as well. As intimated, these actions were not always justiciable as of right by an applicant. Conversely, the orders were considered to be writs of grace that required permission to proceed either given by a judge or the King, Sarah Nason *Judicial Review* (2016), Oxford And Portland, Oregon notes at page 7 "The writs were not always exercisable as of course by any applicant; they were often considered to be writs of grace requiring permission to proceed. The notion of a leave or permission stage in judicial review is not novel..." The position in Tanzania regarding the right to access prerogative orders in Court remain similar to other common law jurisdictions. In *Jaffari Sanya Jussa and Another v Attorney General* [1997] TLR 123, it was stated that judicial review is not available as a matter of right but is subject to judicial discretion and must be exercised only where justified. The requirement for leave serves several important objectives. Firstly, it acts as a filtering mechanism to ensure that frivolous, vexatious, and unmeritorious claims are filtered at a preliminary stage. Secondly, the leave requirement provides the Court with an opportunity to assess whether the case presents substantial legal issues that warrant judicial intervention. Lastly, it prevents the courts from encroaching upon matters that properly fall within the jurisdiction of other legal bodies, ensuring upholding the principle of separation of powers and promoting the efficient functioning of government institutions by allowing each body to operate within its mandate. Coming back to the application at hand, I can not agree more with the Applicant that, in Tanzania, for leave to be granted, the Applicant must demonstrate that he has an arguable case on the merits, sufficient to justify the issuance of the orders sought. On the face of the pleadings, the Court must be convinced that there are substantive issues warranting judicial scrutiny. To bring the case home, the Applicant submitted that he has an arguable case because, upon the resignation of the first Respondent which took effect immediately upon the President's receipt of the resignation letter, the first Respondent continued to occupy the office unconstitutionally, necessitating the Court's intervention. However, the Applicant fairly submitted that he had not seen the resignation letter and was therefore unaware whether it was effective on a future date or had already taken effect. Indeed, no alleged resignation letter from the first Respondent was attached to the application. Understandably, it could be true that the first Respondent resigned. Equally, it is possible that the first Respondent intends to resign at a future date, in which case the resignation has not yet matured. In the absence of such a letter, it would be mere speculation to assume either position. There are always dangers in gambling. A gambler anticipates multiple outcomes, always hoping the coin will flip in his favour. Unfortunately, the Court cannot gamble. It is a disastrous and dangerous path to tread. The risks are too high to take. Without the resignation letter or clear proof of its effectiveness, I am afraid I cannot determine whether there is a strong case in line with the Applicant's submission. To determine whether an arguable case has been made, the application must contain sufficient information so that any reasonable person, considering the nature, purpose, and intent of the matter, can clearly identify the issue under contention. There must be adequate materials placed before

the Court to enable a proper and fair determination. Speculations, no matter how persuasive or rhetorically convincing, cannot in any way meet the test of an arguable case. A *prima facie* case must be established clearly upon reading the application itself, without requiring any further elaboration or supplementary explanation. The Court must be able to discern, from the face of the pleadings, that there exists a genuine and justiciable issue warranting judicial intervention. While quoting S.A. De Smith, *The Prerogative Writs* (1951-1953) C U 11, 55, Sarah Nason in *Reconstructing Judicial Review* (2016), explains the purpose of requiring the Applicant to establish an arguable case, she notes on page 7: "The primary object of this reform was to check abuses of legal process by dishonest and vexatious persons whose machinations were bringing the administration of justice into disrepute..." As indicated, upon perusal of the application and consideration of the Applicant's arguments, I am unable to establish an arguable case. Indeed, it is unclear what argument is intended to be presented before the Court. Commenting on the extent of paper scrutiny, Lord Donaldson MR, in *R v Legal Aid Board, ex parte Hughes* (1992) 24 HLR 698, 702-703, stated as follows: "In such a case leave is or should be granted only if *prima facie* there is already an arguable case for granting the relief claimed. This is not necessarily to be determined on a 'quick perusal of the papers'...a '*prima facie* arguable' case is not established merely by the disclosure of 'what might on further consideration turn out to be an arguable case.' This is the same position in Tanzania. Indeed, the need to attach all relevant documents for an application for leave to establish an arguable case was discussed by the Court of Appeal. In *F.3329 CPL Buberwa Leonard Magayane & Another vs Minister for Home Affairs & Others* (Civil Appeal No. 119 of 2020) [2023] TZCA 17399, the Court stated that, to assist in determining whether an arguable case has been made, all necessary documents must be attached. The Court observed thus: "In the absence of the decision of the RPC from which stemmed an appeal before the 2nd respondent, before the High Court...there was no sufficient material upon which it could be ascertained if the appellants had established a *prima facie* case to warrant the grant of leave to apply for prerogative orders." Unfortunately, the Applicant has not provided any explanation for the omission of such a critical document. Understandably, the alleged resignation letter is a public document, and if it indeed exists, it should unquestionably be available in a public office. Like any other public document, it is presumed to be accessible. In this case, there is no plausible alternative conclusion that can be drawn. In the premises, I find that an arguable case has not been sufficiently established for the Court to exercise its discretion to grant leave to present 10 an application for prerogative orders. As noted, judicial review is not a right but a matter of the Court's discretion. For me to exercise this discretion, there must be sufficient grounds to justify doing so. Otherwise, exercising discretion without valid reasons would amount to an abuse of power. Since the Applicant has not established an arguable case, it would be purely academic to address the other criteria. Accordingly, I decline to grant leave to apply for judicial review. No order as to costs. DATED at DODOMA this 7th Day of February, 2025.

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/325341/source_file/94836fb79df8ba27/MISC_CIVIL_CAUSE_NO_1948_OF_2025_NEW.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/tenzi-anthony-nyundulwa-PrerogativeOrders-tanzlii-2025--6a3ea52e3b1caa9129827138

Prepared on 13 October 2026 · Esheria