

TANZANIA / JUDGMENT

CIVIL APPEAL NO 554 OF 2024 THE REGISTERED TRUSTEES OF NATIONAL CONVENTION FOR CONSTRUCTION AND REFORM NCCR MAGEUZI VS JAMES FRANCIS MBATIA

COURT
TANZLIIDECIDED
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IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM (CORAM: MWARIJA, J.A., MGEYEKWA, J.A. And MLACHA, J.A.) CIVIL APPEAL NO. 554 OF 2024 THE REGISTERED TRUSTEES OF NATIONAL CONVENTION FOR CONSTRUCTION AND REFORM (NCCR - MAGEUZI)..... APPELLANT VERSUS JAMES FRANCIS M BATIA..... RESPONDENT (Appeal against the Ruling and Order of the High Court of Tanzania, Main Registry, at Dar es Salaam) (Mqonva, J.) dated the 21st day of April, 2023 in Misc. Cause No. 04 of 2023 RULING OF THE COURT 21st & 28th February 2025

MGEYEKWA, J.A.: The Registered Trustees of National Convention for Construction and Reform (NCCR - MAGEUZI), the appellant, contests the ruling of the High Court of Tanzania, Main Registry at Dar es Salaam in Miscellaneous Application No. 04 of 2023 dated 21st April, 2023, which declined their application for leave as a way seeking the prerogative writs of certiorari, mandamus and prohibition. The material background and essential facts of the matter as obtained from the record of appeal indicates that, the appellant is the Board of Trustees of the National Convention for Construction and Reform (NCCR - Mageuzi) which is a political party. The respondent was the national chairman, and at one time an elected member of parliament through that party. On 21st May, 2022, NCCR - Mageuzi convened a meeting of the National Executive Committee at Dar es Salaam and resolved to suspend the respondent from his position as the chairman, pending the approval of the National Congress of the party. Subsequently, on 24th September, 2022, the respondent was removed from his position as the chairman and expelled from the party by the National Congress. The respondent, being resentful of the appellant's decision, applied to the High Court for leave under sections 17 (2) and section 19 (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310 and rules 5 (1) (2) & (3) and 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure and Fees) Rules, 2014, GN. No. 324 of 2014 as a prerequisite procedure for seeking the prerogative writs of certiorari, mandamus and prohibition. The respondent presented the following grounds:

- (a) That this honorable court be pleased to grant a leave to file an applicant for prerogative orders of mandamus, certiorari and prohibition: -
- i) Against the respondent for the illegal and unlawful removal of the applicant from the position of the national chairperson of the respondent and expelling the applicant from the respondent without adhering to the principle of natural justice (right to be heard), ii) Against the Respondent for the illegal unlawful removal of the applicant from the position of the national chairperson of the respondent and expelling the applicant from the respondent based on unfounded, unreasonable and unjustified allegations/ reasons, iii) Directing, any further additional, supplementary, or subsequent orders prohibits the respondent from expelling the applicant from respondent and from removing him in the position of national chairperson of the respondent without complying with procedures stipulated under the law and the constitution of the respondent
- (b) Costs to be provided for,
- (c) Any other relief(s) this honorable court may deem just and fit to grant. On 21st April, 2023, the High Court granted the respondent leave to apply for prerogative orders. Dissatisfied, the appellant challenges the High Court's decision by filing the instant appeal. However, for reasons that will shortly come to light, we do not deem it appropriate, for the purpose of this ruling, to reproduce them herein. When the appeal was placed before us for hearing, the appellant was represented by Mr. Faustin Sungura who introduced himself as the Head of legal affairs of the appellant whereas Mr. Hardson Mchau, learned counsel appeared for the respondent. Before hearing of the appeal on merit, Mr. Mchau informed the Court that, on 1st October, 2024, the respondent filed a notice of preliminary objection on the following points of law:
1. The appeal is premature before the court as the order which the appeal is preferred is not appealable for being an interlocutory order of the High Court of Tanzania (Main Registry) at Dar es Salaam, Madame Justice. L E. MGONYA (as she then was) in Misc. Cause No. 4 of 2023, it is barred by the provision of section 5 (2) (d) of the Appellate Jurisdiction Act, Cap. 141, in line with the established principles set out in various decisions of the court including: - The Registered Trustees of National Convention for Construction and Reform (NCCR - Mageuzi) vs. James Francis Mbatia, Civil Application No. 512/01 of 2023, CA Tat Dar es Salaam, Pardeep Singh Hans vs. Joseph F. Massanja vs. The Principal Secretary, Prime Minister's Office, Regional Administration and Local Government and another, Civil Appeal No. 31 of 2009, CAT at Tanga. The appeal was filed out of the prescribed time of sixty days of the date when the notice of appeal was lodged on 8th day of May, 2023 and there is no certificate of delay issued to the appellant by the registrar of the high court in terms of the proviso to rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 in line with the established principles set out in various decision of the court including:- Shafee TaheraH v. Mohamed Enterprises T. Ltd, Civil Appeal No. 86 of 2015, CA T at Iringa, National Microfinance Bank PLC vs. Oddo Odi/o Mbunda, civil appeal no. 95 of 2015, CAT at Iringa. As the practice of the Court demands, the preliminary objections have to be disposed of first

before the determination of the appeal on merit. Having that in mind, we invited the counsel for the parties to address us on the preliminary objections raised by the respondent. In support of the first ground of the preliminary objection, Mr. Mchau was concise and to the point. He argued that the present appeal is premature, as the decision from which the appellant is appealing is interlocutory in nature. He cited section 5 (2) (d) of the Appellate Jurisdiction Act, Cap. 141 (the AJA), and contended that the application is not appealable. The learned counsel for the respondent clarified that, the matter is still pending before the High Court, and as such, this Court cannot entertain an appeal arising from an interlocutory order. To support his proposition, Mr. Mchau cited the case of *The Registered Trustees of National Convention for Construction and Reform (NCCR - Mageuzi) v. James Francis Mbatia*, Civil Application No. 512/01 of 2023. In conclusion, the learned counsel for the respondent urged the Court to strike out the appeal with costs. In response, Mr. Sungura vehemently opposed the first preliminary objection and the submissions made by Mr. Mchau. He contended that the function of the Court of Appeal is to hear and determine any appeal arising from a judgment or other decision of the High Court or a Resident Magistrate with extended jurisdiction. His argument was that, since the present appeal arises from a decision of the High Court, the Court is therefore able to adjudicate the current appeal. On this, he referred us to Article 117 (3) of the Constitution of the United Republic of Tanzania, 1977 (the Constitution). The learned counsel urged the Court to invoke the overriding objective principle to do away with the provisions of Article 117 (4) of the Constitution alleging that it creates legal technicalities and in turn ensure effective administration of justice as stated under Article 107A (2) (e) of the 7 Constitution, As such, Mr. Sungura urged us to find that the first preliminary of objection is devoid of merit. In his rejoinder, Mr. Mchau maintained that the appellant's arguments were without merit. He clarified that while the Constitution encourages the removal of technicalities in the dispensation of justice, it also requires the court to act in strict compliance with the law in the performance of its duties. Having considered the submissions from both parties, the primary issue for our determination is whether the Court has jurisdiction to hear appeals arising from interlocutory orders. We concur with the undisputed assertion made by learned counsel for the respondent that the provision governing the jurisdiction of the Court is section 5 (2) (d) of the AJA. For clarity, we shall reproduce the relevant provision as follows: " (2) Notwithstanding the provision o f section (1)-

- (d) No appeai or application for revision shaii lie against or be made in respect o f any preliminary or interlocutory decision or order o f the High Court unless such decision or order has the effect o f finally determining the suit." 8 The record of appeal clearly shows that the impugned order arose from a High Court decision that did not conclusively resolve the parties' rights; therefore, it was interlocutory and not appealable. While we agree that Article 117 (3) of the Constitution empowers the Court to hear appeals from the High Court, we observe that this provision must be interpreted in conjunction with Article 117 (4) of the Constitution and section 5 (2) (d) of the AJA. In regard to the overriding objective principle raised by Mr. Sungura, this Court on several occasions had categorically stated that the

overriding objective principle cannot be applied blindly against the mandatory provisions of the law which goes to the foundation of the case. See for instance our previous decision in *Njake Enterprise Limited v. Blue Rock Limited and Another*, Civil Appeal No. 69 of 2017 (unreported). In the present appeal, we think, we cannot overlook the fact that the impugned order arose from the High Court decision that did not conclusively resolve the parties' rights, hence cannot be resurrected by the overriding principle. We, therefore, fully agree with Mr. Mchau that the appellant's argument is without merit. Accordingly, we uphold the first ground of the preliminary objection. 9 Since that finding is sufficient to dispose of this appeal, we consider it unnecessary to address the second ground of the preliminary objection, despite having heard submissions on it. In view of what we have demonstrated above, we strike out the appeal with costs. DATED at DAR ES SALAAM this 27th day of February, 2025. A. G. MWARIJA JUSTICE OF APPEAL A. Z. MGEYEKWA JUSTICE OF APPEAL L. M. MLACHA JUSTICE OF APPEAL The Judgement delivered this 28th day of February, 2025 in the presence of Faustin Sungura, Heard of Legal and Constitution Affairs (NCCR - Mageuzi) for the Appellant and Mr. Hardson Mchau, learned counsel for the Respondent, is hereby certified as a true copy of the original. D. R7LYIMO DEPUTY REGISTRAR COURT OF APPEAL

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