

TANZANIA / JUDGMENT

TIMOTHY GASPER MUGEREZA VS GAMING BOARD OF TANZANIA OTHERS MCA NO

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TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (DAR ES SALAAM SUB-REGISTRY) AT DAR ES SALAAM MISCELLANEOUS CIVIL APPLICATION NO. 8662 OF 2024 IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR PREROGATIVE ORDERS OF CERTIORARI AND MANDAMUS AND IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS MISCELLANEOUS PROVISION) ACT CAP 310 R.E 2019 AND IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS MISCELLANEOUS PROVISION (JUDICIAL REVIEW AND FEES) RULES, GN NO. 324 OF 2014 AND IN THE MATTER OF AN APPLICATION TO CHALLENGE THE DECISION OF THE GAMING BOARD OF TANZANIA OF 23RD OCTOBER 2023 THROUGH ITS OFFICIAL FOR BEING UNREASONABLE, ILLEGAL, IRRATIONAL AND TAINTED WITH PROCEDURAL IMPROPRIETY. BETWEEN TIMOTHY GASPER MUGEREZA
..... APPLICANT AND GAMING BOARD OF
TANZANIA..... 1ST RESPONDENT SPORTPESA LIMITED
..... 2ND RESPONDENT ATTORNEY GENERAL
..... 3RD RESPONDENT 1

RULING

Date of last order: 26/08/2024 Date of Ruling: 31/10/2024 A.A MBAGWA, J. This is an application for leave to apply for judicial review. The application has been brought under Sections 18 (1) and 19 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [Cap.310 R.E.2019] hereinafter referred to as the Act, and Rules 5 (2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, GN No. 324 of 2014 (the Rules). The applicant specifically prays for the following orders:

- (a) That this Honourable Court be pleased to grant leave to the Applicant to file an Application for judicial review praying for ORDER of CERTIORARI to quash the decision of the GAMING BOARD OF TANZANIA not directing SPORTPESA TANZANIA to pay the applicant's won prize for being unreasonable, illegal, irrational and tainted with procedural impropriety for failure to observe principles of natural justice. 2

- (b) That this Honourable Court be pleased to grant leave to the applicant to file an application for judicial review praying for ORDERS of MANDAMUS to compel GAMING BOARD OF TANZANIA (the first respondent) order their stakeholder SPORTPESA TANZANIA pay the amount won by the applicant in full.
- (c) That the costs of this application be provided for.
- (d) Any other orders as this Honourable Court may deem fit and just to grant. The application is supported by a statement of grounds verified by the affidavit sworn by Mr. Timothy Gasper Mugereza, the applicant. On the other hand, the application was vigorously resisted by the 1st and 3rd respondents. The 2nd respondent, despite being properly served, did not enter appearance. Thus, upon an application by the applicant, this Court proceeded ex parte against the 2nd respondent. Briefly, the facts pertinent to this application are as follows. The applicant herein was a registered member of a sports bet company named SportPesa Ltd (2nd respondent) in the name of Timothy Gasper Mugereza with a registered username of phone number +255 763 557 132. 3 On the 18th day of December 2022 at about 3:19, the applicant placed two bets with bet number 8657 and 2997 both at stake bet amount of Fifteen Thousand Tanzania Shillings (15,000/=). The applicant expected to win a total sum of Tanzania shillings forty-five million four hundred fifty thousand (TZS 45,450,000/=) before tax deductions as per the short text messages from the 2nd respondent's systems. Nevertheless, at about 8:35 PM, the applicant received two short text messages from the system of the 2nd respondent informing him that he had won a total sum of thirty million and thirty thousand before tax and was paid TZS 27,030,000/= (after tax deduction) which is less amount of the winning amount. Dissatisfied, he made demands to recover the money from the 2nd respondent to no avail. Aggrieved, he unsuccessfully filed a complaint to the 1st respondent, that is BA.25/50/01B which went through mediation and reconsideration proceedings. Unflinchingly, the applicant filed the present application for leave to file an application for prerogative orders of certiorari and mandamus. On 26th August, 2024 when the matter came for hearing, the applicant was represented by Mr. Paschal Mugisha Wenfurebe, the learned advocate, whilst the 1st and 3rd respondents were represented by Mr. 4 Evelius Elias Mwendwa, the learned State Attorney. As indicated earlier on, the 2nd respondent despite being duly served, did not enter appearance. Thus, upon application by the applicant, this court ordered ex parte hearing against the 2nd respondent. Submitting in support of the application, the applicant's counsel adopted the applicant's affidavit and the statement together with their attachments. He contended that the applicant having been paid the less amount, made demands to the 2nd respondent but to no avail and therefore resorted to the 1st respondent. He submitted further that the 1st respondent summoned both the applicant and 2nd respondent for reconciliation but the same ended unsuccessfully. He added that the applicant unsuccessfully filed a petition for reconsideration. The applicant's counsel strongly argued that the applicant was denied his natural right to a fair hearing as the same officers who mediated the matter were the same persons who sat in the reconsideration of the matter. With respect to the grounds for this application, the applicant has enumerated them to include irrationality, illegality, breach of

natural justice, unreasonableness, and procedural impropriety. 5 The applicant is confident that he has satisfied the requisite conditions for the grant of the application. On his part, Mr. Evelius Elias Mwendwa, the learned State Attorney vigorously opposed the application. Having adopted the respondents' counter affidavit and the replying statement of claim, he invited the court to be guided by the conditions that must be satisfied before the leave is granted. To bolster his submission, he cited the case of Emma Bayo vs The Minister for Labour and Youths Development and Others, Civil Appeal No. 79 of 2012, CAT at Arusha on page 8. The learned State Attorney strongly argued that the applicant has no arguable issue as he was availed of the right to be heard. On the issue of bias, it was contended that the applicant has failed to demonstrate how the decision maker was biased as the last decision was made by C. Lamwai, Director General who did not sit in the preceding session. In fine, the learned State Attorney believes that the applicant has failed to demonstrate prima facie or an arguable case warranting him to be heard in judicial review. In a brief rejoinder, the applicant contended that C. Lamwai did not 6 appear in the preceding meeting but was advised by the people who sat in the two preceding meetings. I have considered the rival submissions of both counsel. I have also taken into account the contents of the depositions and the cited case laws. The crucial question for determination in this application is whether the applicant has adduced sufficient grounds for the grant of leave. It is the requirement of the law that before applying for prerogative orders, the applicant must first seek and obtain leave of the court. This requirement is underscored under rule 5 (1) of the Rules. The provision received the court's interpretation in Emma Bayo's case(supra). Likewise, as rightly submitted by the learned State Attorney, the Court of Appeal in Emma Bayo's case (supra), set out three conditions for the High Court to consider when granting leave to the applicant to apply for judicial review. In the said case, the Court of Appeal held that the Court granting leave to apply for judicial review must:

- (i) Satisfy itself that the applicant has made an arguable case to justify the filing of the main application. (ii) Consider whether the applicant is within a six-month limitation period within which to seek judicial review of the impugned decision. 7 (iii) Determine whether the applicant showed sufficient interest to be allowed to file the main application. As far as the application in question is concerned, the applicant argued that he met all the necessary conditions for him to be granted leave and the main complaint is that the composition of the decision-makers during the preceding meeting (mediation) was the same composition of the decision maker during reconsideration session which infringed the applicant's right of fair hearing. On the other hand, the respondents' learned State Attorney urged the Court to find that the applicant miserably failed to satisfy the said conditions. It should be noted that in determining the leave application, reference must be made to the applicant's statement of the grounds for judicial review verified by the affidavit. In this respect, the court has to refer to the reliefs for which judicial review is being sought and the grounds on which the applicant is allowed to advance. Concerning the first condition, the applicant has under Clause 2 of his verifying affidavit averred that: '2. That, on the 18th day of December 2022, at about 3:19, I placed two bets with a bet number 8657 and 2997 8 both at stake bet amount of

fifteen Thousand Tanzanian Shillings (15,000/=) TZS.' The same applicant states under Clause 3 that; "That, according to their messages on both bets I expected to win a total sum of Tanzania shilling forty- five million and four hundred fifty thousand (Tzs. 45,450,000/=) before tax." The applicant further averred under Clause 4 that; "That, at about 8:35 PM surprisingly I received two short text messages from the system of the betting company as mentioned above, congratulating me, that on the bets pressed, I won a total sum of thirty million and thirty thousand before tax which is less amount of the winning amount." Finally, in clause 10 of the same statement, it is expressed that; "10. That, it was after about eight months, when I receive an email through my lawyers, inviting me for the meeting of reconsidering my complaint over the second respondent, and the same officer who attended the mediation meeting also attended the second meeting 9 named reconsideration of the complaint against SPORTPESA TANZANIA, and upheld the decision on the mediation (sic) meeting as per their letter Tax." In my considered view, these are arguable grounds justifying the filing of the application for judicial review. On the second condition, that is whether the applicant is within a six- month limitation period, the applicant has attached annexure TGM 8 to the statement that clearly shows that the impugned decision was delivered on 23rd October 2023 and the present application for leave was filed on 22nd April 2024 hence well within the prescribed time. Lastly, in his statement, the applicant under Clauses 13 and 14 contends that the decision by the 1st respondent denying him his property right is against the rules of natural justice and the principle of legitimate expectations. It is my finding that the applicant has shown sufficient interest or locus standi to file the main application as he is expressing how he has been affected by the decision of the 1st and 2nd respondents and that his rights have to be vindicated. In a nutshell, I find this application for leave to apply for judicial review 10 meritorious. Consequently, I allow the application and grant leave to the applicant to apply for prerogative orders. I make no order as to costs. It is so ordered. A.A. Mbagwa JUDGE 31/10/2024 COURT: This ruling is delivered under my hand and the seal of this Court on this 31st day of October 2024 in the presence of Mr. Paschal Mugisha Wemfulebe, the learned advocate for the applicant and in the absence of the respondents. A.A. Mbagwa JUDGE 31/10/2024 11

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