

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

REVISION NO. 136 OF 2020

BETWEEN

JULIUS BURCHARD RWEYONGEZA.....APPLICANT

AND

UNIVERSITY OF DAR ES SALAAM & 2 OTHERS.....RESPONDENTS

RULING

Date of the Last Order: 12/11/2020

Date of the Ruling: 04/12/2020

A. E. MWIPOPO, J.

This is an application for Judicial Review against the decision of the University of Dar Es Salaam, 1st Respondent to terminated the employment contract of the Applicant namely Julius Burchard Rweyongeza summarily from 4th May, 2017. The application is made under rules 5(1),(2)(a)(b)(c)(d), (3),(5) and 7(1),(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions)(Judicial Review Procedure and Fees) Rules, 2004, section 2(1),(2),(3) of the Judicature and Application of Laws Act, Cap. 358 R.E. 2002, section 17(2) and 19(2), (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310 R.E. 2002, section 94(1) (d) (f) (i) of the Employment and Labour Relations Act, 2004, Rules 24(11) (b) and

55(1) (2) of the Labour Court Rules, 2007. The Applicant is praying to be granted leave to apply for:

1. An order for **Certiorari** to quash the decision of the Second Respondent contained in letter with Ref. No. CP/SC/2/661/129 dated 7th October, 2019 which was served to the Applicant on 17th October, 2019, which summarily dismissed the Applicant from the Public Service with a retrospective effect from 4th May, 2017.
2. An order of **Mandamus** directing the Respondents to recognize that the Applicant's employment with full remuneration of Tshs. 1,451,000/= per month from the date of purported dismissal/termination i.e. 4th May, 2017 to the present day and the days to come until his employment is lawfully determined.

The Application is accompanied with the Chamber Summons and Applicant's Affidavit. Respondents filed the Notice of Opposition accompanied by Respondent's Statement in Reply and Notice of Preliminary Objection (P.O).

The brief background of the application is that: The Applicant was employed by the University of Dar Es Salaam, the 1st Respondent, from 10th March, 2002 to 17th October, 2019, when he was terminated from employment summarily for misconduct effectively from 4th May, 2017. The

termination letter was written by Deputy Vice Chancellor – Administration, 2nd Respondent, who is Applicant’s disciplinary authority. Aggrieved by the 2nd Respondent decision the Applicant filed the present application for leave to file application for **Certiorari** and **Mandamus** on 16th April, 2020, against the Respondents.

The Applicant was represented by the Mr. Gaudin Mlugaluga, Personal Representative, whereas the Respondents were represented Ms. Celina Kapange, State Attorney. Hearing of the application proceeded orally.

Before the parties commenced their submission, it was agreed that the Preliminary Objection (P.O) raised by the Respondent be argued in cause of submission in chief. I find it important to determine first the preliminary objection raised for the reasons to be provided later on herein.

Ms. Celina Kapange, State Attorney, submitted on that the Respondents have filed Notice of P.O. on the ground that the matter was brought to this court prematurely as the Applicant have not exhausted the available local remedies. She proceeded to submit that the application before the Court is incompetent as it was filed contrary to Article 24 Rule 21 and 22 (1) of the University Charter which establishes staff disciplinary Appeal with mandate to hear Appeal against the decision of the disciplinary Committee. The Applicant was dismissed from employment by Deputy Vice Chancellor -

Administration after receiving recommendation of the inquiry committee. The Deputy Vice Chancellor acted under rule 21 (4) of the University charter.

The Applicant was supposed to exhaust the available remedies before institution of the Application for Judicial reviews according to the Judicial Review Rules. This was emphasized in the case of **Parin A. Jafar and Another vs. Abdulsual Ahmed Jafar and Two Others** (1996) TLR at page 110 where it was held that where the law provides for extra Judicial machinery to resolve the dispute then the applicant has to exhaust those available remedies.

Also in this case of **Joshua Nassary vs. Speaker of the National Assembly of the United Republic of Tanzania and Another**, Miscellaneous Civil Cause No. 22 of 2019, High Court of Tanzania at Dodoma, (unreported), the Court held that it is not proper for the Applicant, to file the application without first exhausting the remedies available under the parliamentary standing orders.

Further, in the case of **Jonatas Mgendela vs. Inspector General of Police and Two Others**, Miscellaneous Civil Application No. 24 of 2019, High Court of Tanzania, Main District Registry, at Dar Es Salaam, (unreported), the Court struck out the Application for failure of the Applicant to exhaust the internal remedies before coming to Court.

Basing on the authorities, the application before this Court is incompetent for being filed prematurely for Applicant failure to exhaust the available location remedies.

Replying to the Respondent submission on the P.O., Mr. Gaudin Mlugaluga, Personal Representative, submitted that the Applicant was employed based on the certificate issued by the University of Dar Es Salaam and not on form four Certificate. Thus, the 1st Respondent erred to commence investigation and disciplinary proceedings against him as he was employed not on form for certificate. Also, the inquiry committee have no mandate to recommend the punishment to the disciplinary Authority under Public Service Regulations. The Applicant's personal representative further submitted that this being a labour matter the Court have jurisdiction to grant leave to the Applicant to apply for orders of **Certiorari** and **Mandamus**. The decision relied by the Respondent are of the High Court and are distinguished as they do not related to the Labour matters. Thus, this Court is not bound by the decision. The Applicant prayed for the P.O. to be dismissed.

From the submission of both parties regarding the P.O. the question to be determined is whether the application for the orders of **Certiorari** and

Mandamus were prematurely made by the Applicant for failure to exhaust available internal remedies.

The Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, provides in rule 4 that a person whose interests have been or believes will be adversely affected by any act or omission, proceeding or matter, may apply for judicial review. The same has to be made within six months from the date the cause of action arose. The Respondent submitted that the Applicant have not exhausted available internal remedies before filing application for judicial review as a result the matter is prematurely filed. The Applicant is of the opinion that failure to exhaust internal remedies does not bar employees' access for judicial review.

I have read the University of Dar Es Salaam Charter, 2007. The Charter in rule 22 (1) of the schedule thereto, establishes the Staff Disciplinary Appeals Committee which deals with appeals of staff members aggrieved by the decision of the disciplinary authority. The Committee have appellate powers over the decision of a disciplinary nature or dismissal from termination of service or employment with the University affecting officers. Also I have read the termination letter – Annexure JBR D which informed the Applicant his right to appeal to the Staff Disciplinary Appeals Committee

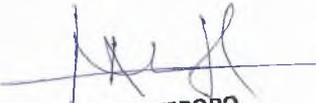
within 45 days if he is not satisfied by the decision of the disciplinary authority. Further, the letter informed the Applicant his right to appeal to the Public Service Commission within 45 days from the date of the decision of the Staff Disciplinary Appeals Committee according to regulation 61(1) of the Public Service Regulations, 2003. From this facts, I find that the Applicant had other internal remedies provided by the University of Dar Es Salaam Charter, 2007, and Public Service Regulations which were clearly availed to him by termination letter.

As submitted by the Respondent, the Applicant was supposed to exhaust the available remedies before institution of the Application for Judicial reviews. This was the position of the Court in the case of **Parin A. Jafar and Another vs. Abdulsual Ahmed Jafar and Two Others** (1996) TLR at page 110; and in **Joshua Nassary vs. Speaker of the National Assembly of the United Republic of Tanzania and Another**, Miscellaneous Civil Cause No. 22 of 2019, High Court of Tanzania at Dodoma, (unreported). Where there are clear provision of law which provides for independent extra Judicial machinery to resolve the dispute as in the present case, then the applicant is expected to exhaust those available remedies. It is after exhausting those remedies when the employee may decide to seek

interference of the Court by way of judicial review which is supervisory power of the Judiciary over administrative actions and decisions.

The Applicant being aggrieved by the decision of the disciplinary authority he has an opportunity to appeal against the decision to the Staff Disciplinary Appeal Committee or to the Public Service Commission which is independent extra judicial machinery. There is no evidence at all to show that the Applicant exhausted those available remedies before decision to apply for judicial review. The prerogative orders may be issued where the injured party has no other specific means of either having decision quashed or the performance of the duty prohibited (See. **Lausa Alfian Salum and 106 Others vs. Minister for Lands, Housing and Urban Development and National Housing Corporation**, [1994] TLR 237.)

Therefore, on the basis of the above points, I find the objection to have merits and I sustain it. I hereby strike out the Revision application for incompetence. As the P.O. has disposed of the application, I'm not going to determine the application on merits. This being a labour matter, I make no order as to cost.


A. E. MWIPOPO
JUDGE
04/12/2020