

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

MISC. CIVIL CAUSE NO. 06 OF 2018

[Arising from Misc. Civil Causes No. 07 & 08 of 2017]

In the Matter of Prerogative Writ of **MANDAMUS**

AND

In the Matter of the Refusal by St. Augustine of University of Tanzania (SAUT) to list the application in the list of graduates and award his Bachelor Degree in Laws (LLB) and to issue him Academic Certificate and Transcripts

BETWEEN

RUTTU B. JEREMIAH APPLICANT

VERSUS

**THE REGISTERED TRUSTEES OF
ST. AUGUSTINE UNIVERSITY OF TANZANIA 1ST RESPONDENT**

**THE DEPUTY VICE CHANCELLOR,
FOR ACADEMIC AFFAIRS OF SAUT 2ND RESPONDENT**

RULING

28th September, 2018 & 24th January, 2019

M.M. SIYANI, J.

On 28th February 2018, Ruttu B. Jeremiah (the applicant herein), through the legal services of M & A Advocates presented an Application for Prerogative Writ of Mandamus under section 17 (1), (2) of the Law Reform

(Fatal Accidents and Miscellaneous Provisions Act Cap 310 RE 2002) and section 2 (1) of the Judicature and Application of Laws Act, Cap 318 and Rule 8 (1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions Act (Judicial Review Procedure and Fee) Rules, GN. No. 324/2014 and prayed for the following reliefs:

- (1) *That this honorable Court be pleased to issue a Prerogative Order of Mandamus to compel the Respondents to officially list the applicant's name in the list of graduates a requirement which is procedurally cognizable by the respondents.*
- (2) *That this Court be pleased to compel the respondent to inaugurate the applicant for the award of his Bachelor's degree in law (LLB) and such award be done before the honorable Court.*
- (3) *That, this Court be pleased to compel the respondent to issue academic transcripts and certificates for the award of the Applicant's Bachelor's degree in laws (LLB)*
- (4) *Costs of the Application be borne by the respondents.*

Having been served with a chamber summons, the respondents through M/s Rugaimukamu & Kisigiro (Advocates) filed a counter affidavit and raised a notice of preliminary objection in limine litis that:

- (i) That the Application before the Court is incompetent for failure to attach the drawn order from the ruling dated 25/8/2017.*
- (ii) That the wrong party has been sued hence has no cause of action.*
- (iii) That the Court does not have jurisdiction to grant what has been asked for.*

When the matter came for hearing on the raised points of objection, counsel Innocent Kisigiro who appeared for the two respondents prayed to abandon the first limb of preliminary objection and proceeded to argue the remaining two points. It was part of Mr. Kisigiro's submission that prior to the current application, the applicant lodged in this Court a similar application No. 08 of 2017 against the Board of Trustees of St. Augustine University. Through the said Application the applicant sought for prerogative orders of mandamus compelling the respondents to include his names in the list of graduates so that he can be awarded a Bachelor degree in law, he having satisfied the requirements for such award. It was submitted that a similar objection was raised against the said application that a wrong party has been sued. Counsel Kisigiro argued that in its Ruling this Court (Gwae. J) sustained the objection and struck out the application on the reason that the proper person to be sued in accordance

with section 25 (1) and (2) of the University Act 2005 and the Charter of St. Augustine University of 2010, was the said St. Augustine University.

The learned counsel went on to contend that, having struck out the application for the reason above, the Court in its own motion, granted the applicant 14 days time to refile his application. In Mr. Kisigiro's view, the applicant was supposed to comply with the order of the court by suing a proper party which according to the said Ruling is St. Augustine University but to the contrary the applicant has sued another party which is the Registered Trustees of St. Augustine University. According to Mr. Kisigiro, there is therefore no cause of action against the Respondent herein as The Registered Trustees no longer exist following the coming into operation of the Charter.

On Jurisdiction of this Court to entertain the matter, which was a third point of objection raised by the Respondent, counsel Kisigiro submitted that the prayers in the chamber summons being on academic matters are not within the powers of this Court to grant under the writ of mandamus. He contended that for an order of mandamus to be granted the following

conditional precedent which were set in **Alfred Lekam Vs Town Director Arusha** (1980) TLR 326 must exist:

- (a) Presence of Legal Rights
- (b) Duties must be Public
- (c) The Right must be on the applicant
- (d) The application must be made on good faith
- (e) Demand for performance must precede the application
- (f) There must exist possibility of enforcement
- (g) There should be no any other legal remedies available

Submitting on the above conditions, counsel Kisigiro contended that, there is no any decision that has been made by the Respondent which neither refused to list the applicant as a graduate nor to issue certificate to the applicant. All what the applicant was supposed to do was to follow the university procedure for him to be awarded his degree. The learned counsel was therefore of the view that none of the conditional precedents listed **Alfred Lekam Vs Town Director Arusha** (supra) has been met in this case.

In his reply, the Applicant conceded to be aware on both the St. Augustine University Charter and the ruling of this Court in Misc. Civil Application No. 8 of 2017. He contended however that, the Charter is not a source of law

in Tanzania and indeed the said Charter has not been published in a gazette as a requirement under Regulation 26 (5) of the University Act General Regulations. The applicant contended that as the charter has not yet been gazette then St. Augustine University is neither a legal nor a natural person capable of being sued. Therefore applicant was firm that the proper person to be sued under the Trustees Incorporations Act Cap 318 RE 2002, is the Registered Trustees.

In his further submissions the Applicant argued that in 2012 the Respondent was sued again in Labour Revision No. 11 of 2012 **Simon Shija Vs St. Augustine University of Tanzania**; where a similar point of objection that a wrong party has been sued was raised. The applicant also invited the Court to follow the stance in **Mathias Charles Kaselele Vs Arch-Diocese of Mwanza Roman Catholic**, Land Case No. 33 of 2005 where in both cases it was found that the proper person to be sued was the Registered Trustees.

Regarding the second limb of the objection on jurisdiction of the Court, it was contended that applications for Judicial Review are historically recognizable by this Court to be governed by three principles:

- (a) Jurisdiction of the Court be established by law

- (b) The applicant must have no any other remedy than the one applied for;
- (c) That the Respondents has refused to grant what has been asked for by the applicant.

Submitting on the principles above, the applicant was of the view that this Court is vested with powers to entertain proceedings for Judicial Review under section 17 (1) and (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions Act, Cap 310 RE 2002) and section 2 (1) of the Judicature and Applications of Laws Act Cap 358. He referred the cases of **Fazal Kassam (Mills) Vs Abdul Agji Kassam and Shubanu Bai Gulamhussein**, (1960) EA 1002; **Simeon Manyaki Vs Executive Committee and Council of the Institute of Financial Management** (1984) TLR 304, **John Mwombeki Byombalirwa Vs The Regional Commissioner ad Regional Police Commander Bukoba** (1986) TLR 75 and **Obadia Salehe Vs Dodoma Wine Company Limited** (1990) TLR 113 which considered the writs of mandamus and certiorari through Judicial Review and granted them where no specific remedy was available in order to repair the defects on justice.

In conclusion it was submitted that the applicant who was enrolled by the Respondent in 2008/2009 to pursue law degree, successfully completed the course; and so the Respondent had a duty of inaugurating him for an award, however the later refused to perform that duty.

Having summarized the rival submissions from the parties, I wish to be very brief. As indicated earlier, both the applicant and the Respondent are not at issue as to the decision of this Court in Misc. Civil Application No. 08 of 2017 where the applicant moved the Court for similar reliefs. For easy of understanding of what I will be stating shortly, I have reproduced what this Court (Gwae. J) said at page 8 of his Ruling:

*It is in this reason I find the SAUT's Charter of 2010 is applicable as the same has been recognized under section 25 (1) & (2) of the Universities Act 2005 and since the Charter was signed by the former president of the United Republic of Tanzania, his excellency President, Hon. Dr. Kikwete on 20th December 2012, I am therefore convinced that the Charter in question is applicable and the one to be sued is **Saint Augustine University of Tanzania (SAUT)** which is a body corporate capable of suing or being sued by virtue of article 3 (1) (a) of the Charter read together with section 26 (a) of the Universities Act, 2005..... Due to the above raised preliminary objection*

(1st and 2nd Point) and noted legal anomalies, this application is incompetent and it is hereby struck out with no order as to costs, for the interest of justice, time to refile an application for judicial review if further preferred, is hereby extended for 14 days from the day of this Order.

[Underlined Emphasis supplied]

My understanding to the above decision is that the applicant's Misc. Civil Application No. 8 of 2017 was incompetent hence struck out for among others, suing a wrong party. This Court (Gwae J) specifically found that the one to be sued is **Saint Augustine University of Tanzania (SAUT)**. It was that decision above which suo motto extended time for the applicant to bring this application against **Saint Augustine University of Tanzania (SAUT)**. Should the applicant wish to bring back his application, he was therefore required to sue **Saint Augustine University of Tanzania (SAUT)**. This application was therefore filed in compliance to the above decision. However, the compliance was only done in respect of time given. The applicant decided to sue **The Registered Trustees of St. Augustine University of Tanzania and the Deputy Vice Chancellor for Academic Affairs of SAUT**. As the order in Misc. Civil Application was clear on who should be sued, by bringing this application against different persons, applicant did not comply with

the said order dated 14th February 2018. His arguments that **Saint Augustine University of Tanzania (SAUT)** is not a legal person capable of being sued because the University Charter has not been gazette is therefore misplaced. He was bound to comply with that order or take necessary legal steps to challenge it if he was not satisfied.

In the upshot, I agree with counsel Kisigiro that since the Order dated 14th February 2018 which declared **Saint Augustine University of Tanzania (SAUT)** as a proper person to be sued remains intact, then by bringing back the same application against different persons, the applicant has sued wrong persons. The second limb of objection therefore hold merits and I accordingly sustain the same. That being said, I will not dwell in an academic exercise by discussing the remaining issue. As it was case in the first instance, this application is again incompetent for the same reasons and deserves nothing but being struck out which I according order with costs.

It is so ordered.



DATED at **MWANZA** this 24th Day of January 2019

M.M. SIYANI

JUDGE