IN THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF TANZANIA

MISC. CIVIL APPLICATION NO. 27 OF 2007
(IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI, MANDAMUS AND DECRALATION)
(IN THE MATTER OF THE DECISION OF THE MINISTER OF LABOUR UPON REFERENCE UNDER THE PROVISIONS OF SECTION 27 (2) OF THE SECURITY OF EMPLOYMENT ACT, CAP. 387 R.E. 2002)

BETWEEN

AFRICAN EXPLOSIVE (T) LTD.....APPLICANT

AND

1. MINISTER OF LABOUR
2. ATTORNEY GENERAL } **.....RESPONDENTS**

RULING

16th Aug. 07 & 17th Aug.07.

MUJULIZI, J:

This is an application for leave to issue to the applicant, African Explosive (T) Ltd, allowing them to apply for orders of Certiorari; Mandamus Declaration and Directions on grounds that the impugned decision made by the Minister for Labour, on 29/07/2007, adversely affected the rights of the applicant.

The impugned decision was made under the provisions of section 27 (2) of the Security of Employment Act, (Cap. 387 R.E.

2002) as saved by the provision of section 103 (3) of the Employment and Labour Relations Act No. 6 of 2004; read together with paragraph 10 of the Third Schedule to that Act.

The decision is challenged on 5 main grounds, which, I will only list, but, in a summary, since at this stage, I am not concerned with the merits of the intended application. They are:

a) Misdirection of an issue of law,
b) Consideration of extraneous/irrelevant consideration/and an error of law,
c) Failure to exercise a statutory duty,
d) The decision was fettered by a self created rule and
e) Gross unreasobleness.

The Chamber Summons is supported by the affidavit sworn by one Colman Babu Shirima, the Human resources Administrator of the Applicant Company. It was sworn on the 24th day of June, 2007.

Mr. C. Matata Learned Advocate appeared for the applicant, and he adopted the said affidavit as to be read.

The Respondents were represented by Mr. P. Rweyongeza Learned State Attorney. They did not object to the grant of the application.

At this stage, the proceedings are proforma, in that, what is required, is the applicant to show that he has been affected by the impugned decision; of either, a public officer or an administrative, or other quasi judicial body, and that he has no more efficacious and alternative remedy.

In this case both elements have been disclosed in the uncontroverted affidavit of Colman Babu Shirima. That is, as far as, facts go.

The only possible barrier would have been on a point of law. The Attorney General has not raised any, and, I am satisfied that the application is within time.

I would therefore proceed to grant the leave as prayed for. The application should be filed within 14 days from the date hereof.

However, in the course of his argument, Mr. Mataka Learned advocate, prayed that the honourable court be pleased, in addition to the grant of the leave, that the same order be taken to operate as a stay of

proceedings, pending the hearing and final determination, of the main application for prerogative orders.

He referred me to the case SHAH V. Resident Magistrate Nairobi (2000), E.A 208, in which it was held that, the court may direct that leave may operate as a stay of proceedings.

With respect to Mr. Mataka, learned advocate, his prayer is a bit misplaced.

I have no doubt at all that the High Court has powers to order stay of execution, or grant, any other interlocutory relief, pending determination of the main application. However, these powers can only be exercised upon an application in that respect, properly made to the Court.

In this case, there is no such application made in the Chamber Summons before me. Secondly, even if such application had been made, then the court could only have exercised its discretionary powers upon evidence that it was necessary in the interest of justice to do so, in order, for instance, not to render the intended application nurgatory. This evidence, must be by way of

an affidavit. There is no such ground in the affidavit read before me.

Mr. C. Matata made an attempt to refer this court to a relief stated in the statement attached to the application. In my judgment, the statement can not constitute the prayer tenable at this stage.

This statement, is required by law; to be part of these proceedings, just, to enable the court, at this stage, to make a determination; whether the remedies sought for, in case of the main application; are available under prerogative orders. It is therefore clear, that the prayer, under the "Relief" in the "statement" – is, in case of the main application, not now.

Lastly, I have serious doubts, as to whether; by stay "proceedings," Mr. Mataka seriously, meant that. I say so because, no proceedings pending before any court of law have been brought to the attention of the court; save from a statement by Mr. Mataka from the bar. It is trite law, that a statement from the bar, can not be a substitute for evidence; either *viva voce,* or by affidavit, and, a Court of law, would not act on such statement, on, a matter of fact.

However, even if he had meant stay of "execution," I have, already adequately answered this issue. There was neither prayer nor evidence, adduced, to support that motion as made from the bar.

In the circumstances therefore, the only remedy available to the applicant is to file the main Application in time; and therein, make appropriate prayers.

In sum therefore, the application for leave is granted.

There will be no costs for these proceedings, in any event.

A. K. MUJULIZI

JUDGE

17/08/2007