

**IN THE HIGH COURT OF ZANZIBAR
AT TUNGUU
CIVIL APPLICATION NO. 108 OF 2022**

SAID ABRAHAM NAJIM	APPLICANT
V		
THE ATTORNEY GENERAL OF ZANZIBAR	1ST RESPONDENT
RASHID SIMAI MSARAKA	2ND RESPONDENT
HAJI MASOUD ABIOLA	3RD RESPONDENT

RULING OF THE COURT

22/03/2023 & 18/05/2023

KAZI, J.:

Said Abrahaman Najim, the applicant in this matter, applied for leave to file an application for a writ of certiorari in respect of the decision of Rashid Simai Msaraka (2nd respondent) of 23rd September 2021 for his order as the District Commissioner for Urban District, of demolition of the applicant property registered under certificate No. 001544, situated at Darajabovu, Kwa Mzushi within Shehia of Chumbuni Zanzibar.

This application was brought by way of chamber summons under section 3 (1) of **the High Court Act** No. 2 of 1985, section 3 (3) and 48 of **the Land Tenure Act**, 1992 and Order

XVIII rule 3 of **the Civil Procedure Decree** Cap 8 of the Laws of Zanzibar. It is supported by the affidavit sworn by the applicant.

Before me, the applicant was represented by Mr. Maulid Abdalla Juma, while Mr. Aboubakar Omar and Ms. Asya Mohamed Ahmed, learned State Attorneys, represented the 1st and 2nd respondents. The 3rd respondent did not enter appearance though duly served. On the day when this matter came for necessary orders, I directed the parties to dispose of the application by way of written submission. Thus, the submission in chief was prepared and filed by the applicant's advocate, whereas Mr. Maulid Juma, learned State Attorney, prepared and filed a submission in reply for the 1st respondent. The 2nd respondent prepared and filed his reply in person.

In their reply, the first and second respondents (respondents) raised legal concerns regarding the propriety of this application, that: -

- a. The application is bad in law for lack of causes of action against Attorney General*

- b. The Application is bad in law by joining the Attorney General in the action done by Rashid Simai Msaraka as a core Respondent.*
- c. The application is bad for suing Rashid Simai Msaraka by his name while during the events he was exercised his duties as District Commissioner of Urban District of Unguja.*
- d. The application is bad in law by filing a judiciary review for the action done by Rashid Simai Msaraka as a core Respondent.*

Thus, I will start by resolving the legal concern, believing they can dispose of this application. In essence, points (c) and (d) query the correctness of challenging the action of the 2nd respondent under his personal capacity through judicial review.

In their submission, the respondents argued that judicial review is a weapon with which a citizen can challenge an oppressive administrative action. They added that the applicant was required to file this application against the 2nd respondent in his official capacity as District Commissioner rather than in his name as an individual.

In opposition, the applicant submitted that the respondents' legal concerns are baseless and unmeritorious. He argued that the order for destruction of the applicant's property was done under the power and authority of the District Commissioner for Urban Unguja, and the act of transferring the land to 3rd respondent for daily uses was done by the 2nd respondent under his personal capacity. Therefore, he maintained, it is proper to prefer this application against the 2nd respondent under his individual capacity.

Now, the only issue to be determined at this juncture is whether the application of this nature can be instituted against a party under a personal capacity.

To answer the issue above, it is imperative to appreciate that judicial review is a public law remedy under which executive and administrative actions are subject to scrutiny by the Judiciary. Richard Gordon Q, C in **Judicial Review: Law and Procedure**, 2nd Ed (Sweet & Maxwell, 1996) defined Judicial Review as a specialised remedy in public law by which the High Court exercises supervisory jurisdiction over inferior courts, tribunals or other public bodies.

In the strength of the purpose of judicial review, I agree with the respondents that an application for judicial review cannot be instituted against a party under a personal capacity because, in exercising the power of judicial review, the Courts usually pass orders and directions to the public bodies and not to individuals.

Therefore, since these two legal concerns alone disposed of this application, resolving other raised concerns will be a fruitless exercise.

In the event, this application is incompetent and hence unmaintainable as it was instituted with the aim of obtaining leave to challenge the action of the second respondent, Rashid Simai Msaraka, a person. Consequently, the application is struck out with costs.

Dated at Tunguu, Zanzibar this 18th day of May 2023.



G. J. KAZI
JUDGE
18/05/2023