

**IN THE HIGH COURT OF ZANZIBAR**

**HOLDEN AT TUNGUU**

**MISC. CIVIL CAUSE NO. 64 OF 2023**

In the matter of an Application for Leave for Judicial Review

**AND**

In the matter of an Application for Leave to apply for Orders of CERTIORARI, MANDAMUS  
AND PROHIBITION

**AND**

In the matter of Decision of the District Commissioner of Urban of Unguja dated 23<sup>rd</sup> day  
of September, 2022 of trespassing and demolition of Applicant's property and order other  
people to occupy and use the Applicant's land in doing car wash workshop which is  
situated at Daraja Bovu Kwamzushi within the Shehia of Chumbuni, Zanzibar

**AND**

In the matter of High Court Act No. 2 of 1985, Land Tenure Act, 1992 as amended to date  
read together with section 129 of the Civil Procedure Decree Cap. 8 of the Laws of  
Zanzibar

**BETWEEN**

**SAID ABRAHMAN NAJIM ..... APPLICANT**

**V.**

**THE ATTORNEY GENERAL OF SMZ ..... 1<sup>st</sup> RESPONDENT**

**DISTRICT COMMISSIONER OF URBAN..... 2<sup>nd</sup> RESPONDENT**

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**RULING**

Dated: **10<sup>th</sup> October, 2023**

**S. HASSAN (J)**

On the 21<sup>st</sup> day of September, 2023 when this Application was fixed for hearing the  
respondents prayed for their legal concern to be heard first before the main application.

The following legal concerns were raised:

1. The application is fatal defective for being brought under wrong enabling provision of law.
2. The application is fatal defective for lack of attaching the alleged decision by the District Commissioner.
3. The application vehemently time barred.
4. The application is bad in law for contravening the government proceeding Act under section 6 (2) of the Act No. 3 of 2010.

SSA MR Abubakar Omar from the AGC, representing both respondents, made his submission on the legal concerns and started with 1<sup>st</sup> legal concern and stated that, the court is not properly moved and that, the applicant has cited wrong provisions to move this court to hear the application for leave of Judicial Review. He made his argument that **section 48 of the Land Tenure Act No. 12 of 1992** deals with termination of lease and **Order XVII Rule (3) of the Civil Procedure Decree, Cap 8**, deals with ex- parte application and not Judicial Review Applications. Mr Abubakar further submitted that, the applicant was to cite **section 129 of Civil Procedure Decree (supra)**, and **section 3(1) (a) of the High Court Act**, to move this court properly.

With respect **2<sup>nd</sup> and 3<sup>rd</sup> issues of legal concern**, Mr Abubakar submitted that, the leave for judicial review is to be applied with 6 months from the date the cause of action, but the current application was lodged in July, 2023 while the matter arose in September, 2021 as per the applicant affidavit. Mr abubakar made reference to the case of **Emma Bayo v. The Minister for Labour and Youth Development & 2 others, Civil Appeal No. 79 of 2012** and the case of **Chole Mjini Conservation & Development Company Limited & 5 Others v. The Minister for Livestock Development and Fisheries and the Attorney General, Misc Civil Application No. 36 of 2010**.

He further submitted that the current application is time barred for 2 years while the same was to be lodge with 6 months, furthermore, the applicant has not provides the Order of District Commissioner of Urban District which violated his interest in the land

With respect to the **4<sup>th</sup> issue of legal concern**, Mr Abubakar submitted that the applicant has not given notice to sue to the respondents as per the requirement of **section 6 (2) of the Act No. 3 of 2010** and that the purported notice given by the applicant as shown in Annex S8 falls shorts of the requirement of the law.

In the end Mr Abubakar prayed for the application to be dismissed with costs.

In his reply Advocate Maulid Abdalla Juma representing the Applicant submitted that in Zanzibar there is no specific legislation which governs how to file for judicial review. He submitted that, **section 3(1) (a) of the High Court Act No. 2 of 1985**, give general powers to the High Court of unlimited jurisdiction to hear and determine matters so as **section 129 of the CPD Cap, 8**. He further submitted that it was omission on his part to cite **section 48 of the Act No. 12 of 1992**. It was his submission that, the court is properly moved under **section 3 (1) (a) of Act No. 2 of 1985 and section 129 of CPD Cap, 8**.

With respect to **2<sup>nd</sup> and 3<sup>rd</sup> issues of legal concern**, Mr Maulid disagree with the submission made by the respondent on the time limit and stated that, the case laws cited by the respondents have no relevance with the application in hand, his reason was that in Zanzibar there is no Legislation which stipulate time to file for leave for judicial review and made reference to **section 131 of the Limitation Decree, Cap 12** of the Laws of Zanzibar. With regard to the issue raised by the respondent of not providing the Order of District Commissioner which violated the legal interest of the applicant land, Mr Maulid submitted that, the affidavit of the applicant is enough at this stage of the application for leave.

With respect to **4<sup>th</sup> issue of legal concern**, Mr Maulid submitted that the requirement to give notice to sue the government under **section 6(2) of the Act No. 3 of 2010** was complied with as shown in **annex S8**.

In the end he prayed for the court to dismiss the legal concern raised by the respondents for lack of merits.

In his brief rejoinder, Mr Abubakar reiterated his position that, this current application is time barred, the court is not moved properly and that it is fatal for applicant not showing the order of the District Commissioner for Urban District of Unguja which violated his interest in his property.

Having heard the submissions of both parties, I shall first warning myself on the temptation of determine the main application for leave at this stage because the application has yet to be argued, hence I shall carefully confined myself with the legal concerns in hand.

Taking that warning in mind, I shall first determine the main issue of concern which is whether the current application is time barred or not.

Respectfully, in respect of **3<sup>rd</sup> ground** of the legal concern, both parties are in agreement that, in Zanzibar there is no specific legislation which governs the procedures for filling for judicial review, that being the case *Hon. Abdul- Hakim A.Issa (J) (as he was then)* in the case of **Cotext Zanzibar Limited v. The Attorney General, Zanzibar, in Civil Application No. 61 of 2019 at page 6** of his Ruling on the matter of limitation to apply for judicial review had this to say:

**“ On the issue of limitation unfortunately, in Zanzibar there is no law which prescribes the limitation for bringing an application for judicial review...”**

The view of *Hon Issa (J)* is same view of the parties in this application. Furthermore, the 1<sup>st</sup> respondent in this Application was also a party to the Cotext Zanzibar Limited case (supra), then he should have known the position taken by *Hon Judge Issa*, (as he was then) on the issue of limitation to file for leave for Judicial Review.

With respect to the cited case authorities cited by respondents **Emma Bayo v. The Minister for Labour and Youth Development & 2 others, Civil Appeal No. 79 of 2012** and the case of **Chole Mjini Conservation & Development Company Limited & 5 Others v. The Minister for Livestock Development and Fisheries and the Attorney General, Misc Civil Application No. 36 of 2010**, as much as I take notice and acknowledgment to the fact that the decision of the Court of Appeal binds all lower courts, but in those cases cited herein above the Court of Appeal made reference to specific legislation which provides for time limit to file for leave ( **Law Reform (Fatal Accidents and Miscellaneous Provision Act)** whereby **section 19 (3)** of the said Act prescribed for six months limitation period, which is not the case here in Zanzibar, hence this Court takes same root of that taken by *Hon. Issa (J)* in Cotext case (supra) that, there is no specific law which prescribes for limitation for bringing an application for judicial review here in Zanzibar. Hence the issue of limitation raised by the respondent has no merit.

With respect to the **1<sup>st</sup> ground of the legal concern** on the issue of enabling provision of the law and whether this court was properly moved or not, both parties are also in agreement that **section 3(1) (a) of the High Court Act No. 2 of 1985 and section 129 of the Civil Procedure Decree** may be used to move the court to sit and determining the application for leave to file for judicial review, the applicant has taken note of the **48 of ACT No. 12 of 1992**, that it was omission on their side to cite that section.

In determining this point, I am of the view that, I shall not be detained much with this point for obvious reasons that in the absence of specific legislation which stipulate the citation of enabling provisions for filling for judicial review, **section 3 (1) (a) of the**

**High Court Act No. 2 of 1985** which provides High Court with unlimited jurisdiction to determine matters of civil and criminal nature but specifically **section 129 of Civil Procedure Decree Cap 8**, which provides for inherent powers of the court to make such orders as may be necessary for end of justice or to prevent abuse of the process of the court, can be cited as enabling provision to move the court in the absence of the specific legislation on judicial review matters. Therefore this legal concern has no merit also.

With respect to **2<sup>nd</sup> ground of the legal concern** it is the view of respondents that this application is defective for failure of the applicant to attach the alleged decision which violated the rights of the applicant on his property, while the applicant view is that at this stage there is no need to attach such order, it is the view of this court that since this is only an application for leave to apply for judicial review, the respondent may raise this issue during the hearing and not at this stage, in the course of hearing the court shall determine whether the applicant has raised arguable grounds which may move this court to grant the leave, at this stage it is premature for the respondents to raise that point, for those reasons, this point is also dismissed for lack of merits.

Having determined the main issues of the legal concern and dismissed them for lack of merit, this court will not make further findings on the Notice to Sue the Government which is **4<sup>th</sup> ground of the legal concern** because it is the view of this court that, first, the provision of **section 6(2) of the Act No. 3 of 2010** have been complied with and second, it will not help the respondents to escape the hearing of the intended application for leave to apply for judicial review.

Having said that, and before I conclude, I think it is high time for this court to raise its voice and advise the 1<sup>st</sup> respondent in his capacity as Principal Legal Advisor to the Government to take note on vacuum of not having specific legislation or provisions prescribing for filing of judicial review matters here in Zanzibar, the 1<sup>st</sup> respondent may wish to take appropriate measures to address this vacuum and come up with solution in the near future.

In the end, this court is not persuaded by the legal concerns raised by the respondents, and the legal concerns are hereby dismissed for lack of merits.

***It is so ordered.***

**S.HASSAN, J**  
**S g d**  
**10/10/2023**

**Court:**

The Ruling is delivered open Court in the presence of Appellant and his Advocate Mr. Maulid Abdalla and in the presence of Respondent State Attorney Asya Mohamed Ahmed, this day of 10<sup>th</sup> October, 2023.

**S.HASSAN, J**  
**S g d**  
**10/10/2023**

***I CERTIFY TO TRUE COPY OF THE ORIGINAL***



.....  
**REGISTRAR**  
**HIGH COURT- ZANZIBAR.**