

IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO 16 OF 2020

THE REGISTERED TRUSTEE OF

TANZANIA BUS OWNERS ASSOCIATION APPLICANT

VERSUS

LAND TRANSPORT REGULATORY AUTHORITY..... 1st RESPONDENT

THE ATTORNEY GENERAL 2nd RESPONDENT

DRAWN ORDER

WHEREFORE, the Respondents raised preliminary objection on the points of law to the effect that: -

1. The applicant has not exhausted available alternative remedies which are provided for under section 27 and 28 of the Land Transport Regulatory Authority Act No. 3 of 2019 before recourse to this court.
2. That there is no decision shown which is worth to be review by this Honorable Court.
3. That the Applicant has no locus stand in terms of Rule 4 of the Law Reform (Fatal Accident Miscellaneous) Provision (Judicial Review Procedure and Fees) Rules, 2014 for want of attachment of the Resolution document from the beneficiaries.

This Ruling delivered in chamber and accordingly read by Hon. S. Sarwatt, Registrar the High Court, this 12th day of October, 2020 in the presence of Ms. Gati Mseti, State Attorney, for the First and Second Respondents, assisted by Ms. Monica Sambo, Legal Officer, for the 1st Respondent and in the absence of the Applicant.

THIS COURT DOTH HEREBY ORDER THAT:

The third point of preliminary objection is meritorious. Application is struck out with costs.

BY THE COURT

GIVEN under my HAND and SEAL of the court this 12th day of October 2020.



B.S. MASOUB
B.S. MASOUB,
JUDGE.

Extracted this 27th day of October 2020.

Issued on 02 day of October 2020.

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 46 OF 2020

**THE REGISTERED TRUSTEES OF
TANZANIA BUS OWNERS ASSOCIATION.....APPLICANT**

VERSUS

**LAND TRANSPORT REGULATORY
AUTHORITY (LATRA).....1st RESPONDENT**

THE ATTORNEY GENERAL.....2nd RESPONDENT

RULING

02/10/2020 & 12/10/2020

Masoud, J.

The applicant, the Registered Trustees of Bus Owners Association, sought a leave of this court to file an application for judicial review against the decision compelling the applicant's beneficiaries to use electronic tickets without and or before being educated. The prerogative orders intended to be sought in the intended judicial review were, as set

out in the chamber summons, certiorari to quash the decision, mandamus to compel the first respondent to provide seminars and training sessions to the applicant's beneficiaries within a specified period, and prohibition to prohibit the first respondent from compelling the applicant's beneficiaries to pay 2% per ticket issued to a customer as operating costs.

The decision complained of by the applicant was allegedly contained in the notice of the first respondent's Managing Director of 23/07/2020 issued to the public. The notice was alleged to have required all public Bus Owners in Tanzania Mainland to provide service of transporting passengers from one place to another place by issuing electronic tickets. A copy of the public notice entitled in Kiswahili ***Safari za Mabasi kutumua tiketi Mtandao*** was annexed in the affidavit sworn by Joseph Priscus John, Secretary General of the Association of the applicant in support of the application.

The application was made under sections 17(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [cap. 310 R.E 2019], and rules 4, 5(1)&(2)(a),(b),(c),&(d), 5(3) and 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and

Fees) Rules, 2014 GN No. 324 of 2014). It was supported by the affidavit and statement of facts sworn and signed by the above-mentioned deponent. The application was opposed by the respondents through a counter-affidavit sworn by Gilliard Wison Ngewe, Director General of the first respondent and statement in reply signed by Masunga Kamihanda, learned State Attorney.

The respondents also filed a notice of preliminary objections consisting of the following points: One, that the applicants has not exhausted available remedies which are provided for under section 27 and 28 of the Land Transport Regulatory Authority Act No. 3 of 2019 before recourse to this court; two, there was no decision to be reviewed by this honourable court; and three, the applicant has no locus standi in terms of rule 4 of the Law Reform (Fatal Accidents Miscellaneous Provisions)(Judicial Review Procedure and Fees) Rules, 2014 for want of attachment of a resolution document from the beneficiaries.

The preliminary points of objection were disposed of by oral submissions. The applicant was advocated by Mr Michael Nyambi, and Mr Nesto Mkoba, Advocate, while Mr Masunga Kamihanda, State State Attorney, represented the respondents. It is important to mention that

Mr Masunga Kamihanda, argued all three preliminary points of objection. The submissions expounded on the points of objections in details, but they were vigorously opposed by the applicant's counsel. The rival submissions of both counsel are on the record. I do not need to reproduce them here.

Having considered the rival submissions of both counsel, I saw it fit to start with the point which invited me to find that the applicant does not have locus standi to prosecute this matter. This point, as it will become clear shortly, linked very well with the point on the lack of authority to institute and appear in the present proceedings. The arguments and submissions of the counsel for the respondents were based on the complaint that the affidavit in support of the application does not disclose facts showing how the complained decision of the first respondent, which was not accompanied by the application affected the applicant's personal interests.

There was no resolution of the applicant's members, whose interests have been or would be affected it was added. Neither was there any document showing the authority given to the applicant to institute these proceedings on behalf of the alleged beneficiaries based on the interests

that they have suffered or would suffer pursuant to the above mentioned provision of rule 4 of the Judicial Review Rules (supra).

I understood the learned State Attorney for the respondents as saying that a mere assertion that the alleged beneficiaries were members of the applicant's association whose object is protecting the members' interests does not amount into showing how the interests of the undisclosed beneficiaries in relation to the complained decision have been or will be adversely affected by the alleged decision.

Particular reference was made to the affidavit and the statement of facts which do not at all disclose any interest of the applicant or its beneficiaries adversely affected by the first respondent's decision. I was referred to the principle of law under rule 4 of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 requiring an applicant to show how his interest has been affected or will be adversely affected. This provision reads and I quote:

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.

I was also referred to **Legal and Human Rights Centre and Others vs The Minister for Information, Culture, Arts, and Sports and Others**, Misc. Civil Application No. 12 of 2018 in relation to the applicability of the above provision of the Rules and the requirement for one to demonstrate how his interests has been or will be adversely affected.

On the part of the applicant, the applicant's learned counsel used the affidavit of the applicant to argue and show how the applicant's interest is shown in paragraph 3, 5, and 7 and how and the extent to which the impugned decision affected her interest. The said paragraphs, the court was told, showed the functions of the association of the applicant which is to protect its members, the fact that the beneficiaries were very much affected, and how the decision affected beneficiaries.

The court was also told that in so far as the applicant was a body of registered trustees and not a company, the case of **Ursino Palms Estate Ltd vs Kyela Valley Foods Ltd and Others**, Civil Application No. 28 of 2014 relating to the requirement of being appointed by a company resolution to institute proceeding and/or appear for the

company, which was cited by the learned State Attorney in support of his submissions, was not applicable in the present application.

As far as I am concerned, I have examined the affidavit of the applicant and its annexures against the question whether the applicant's interest on the alleged decision has been shown. In so doing, I also took into account the provision of rule 4 of the Rules (supra) and underscored the phrase "adverse effect" of the complained decision, which must be shown.

The affidavit was deponed and verified by the said Joseph Priscus John of his own personal knowledge. It sought to cater for interests of various beneficiaries who were not disclosed in any manner as is how their different interests were adversely affected by the complained decision. Paragraphs 3,5, and 7 of the applicant's affidavit disclosed facts which the applicant alleged that they disclosed her interests.

The respondents alleged that the said paragraphs did not disclose any sufficient interest as to how the applicant was adversely affected by the complained decision. The above-mentioned paragraphs of the affidavit as well as paragraphs 1 and 2 read as follow:

I, Joseph Priscus John an adult male Christian, of sound mind and resident of Dar es Salaam Do HEREBY SWEAR and STATE as follows:

1. That, I am the General Secretary of Tanzania Bus Owners Association this conversant with the facts I am about to depose hereunder.

2. That the applicant herein above is a Registered Trustee, of Tanzania Bus Owners Association, registered under the laws of Tanzania, that has power to sue and being sued. Annexure hereto and marked as TABOA 1 is the photocopy of the certificate of registration forming party of this affidavit.

3. That, among the functions of the Trust, is to protect the interest of its members who are the public bus owners in Tanzania Mainland.

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6.....

7. That, apart from not be (sic) trained or educated on the use of electronic tickets, in most party of Tanzania apart from Dar es Salaam, Mwanza, Arusha, and Mbeya where the applicant has its members there is a serious lack of even mere knowledge of electronic ticketing.

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10.....

I have scrutinized the above paragraphs in the light of the arguments for and against the points that there were no interests disclosed and further that there was no authority by the applicant's members for institution of or appearance to the present proceedings. The applicant is a body corporate registered under the Trustees Incorporation Act, cap. 318 R.E 2019. As an incorporated body, the applicant can pursuant to section

8(1) of the above Act sue and be sued in its own name as is the case with any company. The applicant has registered trustees who are empowered to deliberate and resolve for the actions and conducts of the applicant including exercising its power to sue. The authority to sue is thus crucial for institution of any proceedings by the applicant.

The present proceedings were commenced by Joseph Priscus John who is General Secretary of the Tanzania Bus Owners Association. He deponed the affidavit in support of the application of his own knowledge. Apart from being the General Secretary of the Tanzania Bus Owners Association, he did not in his affidavit or statement of facts claim to be a chairman, secretary or a member of the applicant (i.e the Registered Trustees of the Tanzania Bus Owners Association). This negates interests on the part of the applicants on the complained decision, I would say.

There is also nowhere in the affidavit the said deponent has indicated that he was authorized by the applicant to institute these proceedings, swear the affidavit and sign the relevant documents. There was likewise no deposition in the very affidavit as to any resolution of the applicant that authorized the deponent to make the affidavit, let alone the authority to institute these proceedings. This alone negates interests of

the applicant in the matter, for the affidavit of the said Joseph Priscus John was not sworn and the present proceedings commenced with the authorization of the applicant.

Besides the foregoing, the affidavit of the applicant did not disclose or mention the alleged beneficiaries in Mwanza, Dar es salaam, and Arusha whose interests were or would be adversely affected by the alleged decision of the first respondent. It was also not shown that the undisclosed beneficiaries were members of the association referred in paragraph 3 of the affidavit. In addition, the beneficiaries were neither mentioned nor were their licenses in the relevant business shown. The question which I endeavoured to answer is whether the above facts sufficiently demonstrate the applicant's beneficiaries' interest, regard being had to the discrepancies shown.

It is indeed the position of the law that for any application for leave to apply for judicial review to be entertained by the court, the applicant must show by facts in the affidavit that his interests have been or will be adversely affected unless the court intervenes by prerogative orders. As earlier stated, and in view of the above analysis and finding, the issue is whether the applicant has been able to show, by facts disclosed in his

affidavit that she has an interest that fits into the requirements of rule 4 of the Judicial Review Rules (*supra*).

In other words, the issue is whether the applicant has sufficiently shown in his affidavit that his interests have been or will be adversely affected by the alleged decision of the first respondent. Based on the foregoing analysis and finding, I am not prepared to answer this issue in the affirmative.

Indeed, one would have expected to see in the affidavit a connecting link between the applicant, the alleged beneficiaries, alleged adverse effect on the interests of the beneficiaries and the applicant which may be varied, and the reliefs being sought. This was glaringly not the case.

The paragraphs of the affidavit reproduced herein above tell it all loud and clear.

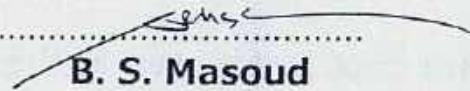
Thus, I will find merit on the preliminary objection as to lack of locus standi and authority to institute these proceedings and hold that the affidavit does not disclose sufficient interest on the part of the applicant, neither does it show that the institution of these proceedings were authorized by the applicant.

In view of my above finding which is sufficient to dispose of this matter I find it an academic exercise to labour on the other points of preliminary objections raised.

In the results, the application is struck out with costs. I order accordingly.

Dated at Dar es Salaam this 12th day of October 2020.




B. S. Masoud
Judge