



IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: NDIKA, J.A., MURUKE, J.A. And MGEYEKWA, JA)

CIVIL APPEAL NO. 380 OF 2024

**PERMANENT SECRETARY,
PUBLIC SERVICE MANAGEMENT AND GOOD GOVERNANCE.....1ST APPELLANT
ATTORNEY GENERAL2ND APPELLANT**

VERSUS

**KOMANYA ERIC KITWALARESPONDENT
(Appeal against the Ruling and Order of the High Court of Tanzania,
Main Registry at Dar es Salaam)**

(Mkwizu, J.)

dated the 8th February, 2024

in

Misc. Cause No. 24 of 2023

.....

JUDGMENT OF THE COURT

14th April & 5th May, 2025

MGEYEKWA, J.A.:

The Permanent Secretary, Public Service Management and Good Governance and Attorney General, the appellants, contest the ruling of the High Court of Tanzania, Main Registry at Dar es Salaam in Miscellaneous Application No. 24 of 2023 dated 8th February, 2023, which decided in favour of the respondent.

The material background and essential facts of the matter as obtained from the record of appeal are as follows: the respondent is a former employee of the Public Service Social Security Fund (the PSSSF).

He was employed as a legal officer, the position he held from 30th July, 2010 to 30 July, 2018 when he was appointed as a District Commissioner, Tabora District. The position he served until 18th November, 2021 when his appointment was revoked by the President of the United Republic of Tanzania.

Following the revocation, the respondent wrote a letter to the Public Service Management and Good Governance requesting to be reinstated to his former position at the PSSSF. In response thereto, on 15th August, 2022, he was served with a letter from the Public Service Management and Good Governance informing him that he has been retired from the public service in the public interest by the President of the United Republic of Tanzania.

The respondent, being resentful of the appellant's decision, filed an application on 15th February, 2022, in the High Court under sections 18 (1) and section 19 (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310 [R.E 2002] and rules 5 (1) (2)(a)(b)(c)(d), (3), (4) and 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure and Fees) Rules, 2014, GN. No. 324 of 2014 as a prerequisite procedure for seeking the prerogative writs of certiorari and mandamus. The respondent presented the following grounds:

(a) That this honorable court be pleased to grant leave to the applicant herein to file an application for certiorari to call for, quash and set aside the decision by the President of the United Republic of Tanzania, for being made ultra vires, against the rules of natural justice and for being embarrassing to the applicant.

(b) That this honorable court be pleased to issue an order of mandamus to compel the 1st Respondent to reinstate the applicant into his employment before he was appointed to the position of District Commissioner, and that he be paid all his salary arrears, other emoluments from 28th June 2021 to the date of his reinstatement.

(c) Costs be borne by the Respondent.

(d) Any other Order or Orders that this honorable court may deem just and equitable to grant.

As alluded to above on 8th February, 2024, the High Court granted the respondent's application. Undaunted, the appellant has preferred an appeal to the Court. In the Memorandum of Appeal, filed on 26th June, 2024, the appellant has set forth five grounds of appeal as follows:

- 1. That, the High Court erred in law and fact by holding that the President is duty-bound to assign reasons for removing a Public Servant for public interest.*
- 2. That, the High Court erred in law and fact by granting a relief that is not amenable under Judicial Review.*

3. *That, the High Court erred in law and fact by granting a relief which was not sought by the respondent in the Chamber Summons.*
4. *That, the High Court erred in law and fact by failure to take into account the submissions of the counsel for the appellants on the distinction between removal of a Public Servant from Public Service and dismissal of a Public Servant on disciplinary grounds.*
5. *That, the High Court erred in law and fact by failure to take into account relevant matters while reaching a decision of awarding costs.*

When the appeal was placed before us for hearing, the appellants had the services of Mr. Deodatus Nyoni, learned Principal State Attorney who teamed up with Mr. Edwin Webiro and Mr. Erigh Rumisha, both learned State Attorneys. The respondent was represented by Jeremia Mtobesya, learned counsel. The appellant's written submissions filed on 26th August, 2024, were duly countered by the respondent's counsel in his oral submissions. Before Mr. Nyoni could start to argue the grounds of appeal, he prayed to abandon the fifth ground of appeal, the prayer of which was granted.

In support of the first and fourth grounds of appeal, Mr. Nyoni asserted that Article 36 (1) and (2) of the Constitution of the United

Republic of Tanzania, 1977 (the Constitution), section 24 (now 26) of the Public Service Act, Cap. 298, Rule 29 (1) of the Public Service Regulations GN. No. 168 of 2003 and F40 of Standing Order for the Public Service, 2009, which do not suggest that the President is to assign reasons while exercising such powers. Thus, it was his submission that the High Court erred by stating that it was improper to remove a public servant without stating any reasons. To justify his submission, he asserted that once the public servant is notified and removed for public interest, such public interest by itself, amounts to reasons.

The learned Principal State Attorney continued to submit that the learned Judge failed to distinguish between the removal of a public servant from public service and the dismissal of a public servant. Elaborating, he submitted that the normal termination or dismissal from employment of a public servant occurs when the public servant is formally charged, an investigation is conducted, and the authority is required to afford him the right to be heard and to state reasons for termination. If he is dissatisfied, he can appeal to the President, and later he can appeal to the High Court.

The learned Principal State Attorney argued that where termination is grounded on valid and established reasons, the legal consequence is that the employee forfeits the attendant rights of employment, while in

cases of removal by the President, the law accords a different treatment altogether; such removal is, by design, deemed to be a retirement from service. In that event, the employee does not lose his terminal entitlements but is, instead, entitled to retirement benefits in accordance with section 26 of the Public Service Retirement Benefits Act, Cap. 371. To reinforce his stance, Mr. Nyoni placed reliance on the decision of the Court in **Cleoplace M. Motiba & Others v. The Principal Secretary Ministry of Finance & Others**, Civil Appeal No. 27 of 2010 [2010] TZCA 115 and **Republic v. Mwesige Godfrey & Another**, Criminal Appeal No. 355 of 2015) [2015] TZCA 264.

Submitting on grounds two and three, Mr. Webiro argued that the learned Judge issued an order of mandamus compelling the first respondent to reconsider the respondent's application for reinstatement in accordance with the law while the respondent prayed to be reinstated. It was his submission that the sought relief is not amenable to judicial review. Expounding, Mr. Webiro argued that judicial review is not concerned with the merits of the decision being challenged but with the decision-making process. To buttress his submission, he cited the case of **Chief Constable of the North Wales Police v. Evans** [1982] UKHL 10. Thus, it was his submission that the High Court was not in position to substitute the opinion

of a quasi-judicial board. The learned State Attorney argued that since the decision was improper for failure to state reasons, it could end there.

Mr. Webiro further submitted that the High Court fell into error in granting an order of mandamus in circumstances where the respondent had not satisfied the conditions precedent for its issuance, as laid down in **John Mwombeki Byombariwa v. Regional Commissioner, Kagera & Another**, Miscellaneous Civil Cause No. 22 of 186 which are; **one**, the applicant must have demanded performance and the respondents must have refused to perform, **two**, the respondents as public officers must have a public duty to perform imposed on them by statute or any other law but it should not be a duty owed solely to the state but should be a duty owed as well to the individual citizen, **three**, the public duty imposed should be of an imperative nature and not a discretionary one, **four**, the applicant must have a *locus standi*: that is, he must have sufficient interest in the matter he is applying for and **five**, there should be no other appropriate remedy available to the applicant. In support of that proposition, he cited **Barclays Bank T. Ltd v. Jacob Muro** (Civil Appeal 357 of 2019) [2020] TZCA 1875 and **Mexon's Investment Limited v. DTRC Trading Company Limited**, Civil Appeal No. 91 of 2019) [2021] TZCA 3551, where the Court underscored the principle that a court cannot

make out a new case for the parties or grant a remedy which has neither been prayed for nor flows from the pleaded claim. In conclusion, the learned State Attorney urged this Court to quash and set aside the judgment of the High Court and allow the appeal.

Responding to the arguments raised by appellants' learned counsel, Mr. Mtobesya forcefully opposed the appeal and stated that there is no error in the impugned ruling of the High Court. Mr. Mtobesya chose the same style of submission as done by the appellant's counsel by combining ground one and ground four and ground two and ground three.

Submitting on the first and fourth grounds, Mr. Mtobesya argued that the respondent was not released from public service but was merely seconded. The learned counsel for the respondent further contended that the appellants' counsel had conflated two distinct concepts in public service law, namely dismissal and removal. He clarified that, unlike dismissal, removal of a public servant from service, particularly where effected in the public interest, requires that reasons be stated, to satisfy the demands of legality and fairness. He further submitted that, in the absence of stated reasons for the respondent's removal from office, the respondent was effectively denied the opportunity to understand the basis of the decision, to respond to it, or to exercise his right of appeal in an informed manner.

In support of that proposition, he relied on **James Gwagilo v. Attorney General**, 1994 T. L. R 73, where the Court emphasized the necessity of giving reasons in decisions affecting public servants. He also cited **Tanzania Air Services Limited v. Minister for Labour, Attorney General and the Commissioner for Labour**, Misc. Civil Application No. 1 of 1995 [1995] TZHC 1260, to buttress the argument that failure to assign reasons renders such a decision a nullity.

The learned counsel further argued that, under Article 33 of the Constitution of the United Republic of Tanzania, the duty to give reasons is indispensable as it safeguards fairness and transparency in administrative action. He maintained that Article 36 of the Constitution does not oust this requirement and is inapplicable where the President exercises the power to terminate or remove a public servant from office without disclosing the underlying reasons.

As regards the second and third grounds, Jeremia Mtobesya submitted that once the order of certiorari had been granted, the ensuing order of mandamus was merely consequential. He elaborated that, upon quashing the impugned decision of the President, what remained was to restore the matter to its lawful footing, which necessitated a direction to the relevant authority to reconsider the respondent's application for

reinstatement in accordance with the law. He pointed out that the learned Judge did not purport to reinstate the respondent outright, but instead ordered reconsideration, a course well within the scope of judicial review remedies. In support of this proposition, he relied on **Tanzania Air Services** (supra). In his conclusion, Mr. Mtobesya implored the Court to dismiss the appeal.

In a brief rejoinder, Mr. Nyoni reiterated his earlier submissions and maintained that the respondent had not demonstrated any legal basis for the reliefs granted.

Having anxiously considered the rival submissions, the record of appeal, the applicable law, and the grounds of appeal, two issues arise for our determination: first, whether there existed a legal duty to assign reasons for the respondent's removal from public service; and second, whether the order of mandamus was properly granted.

On the first and fourth grounds of appeal, which address the first issue, we begin by observing that it is common ground that the power to remove a public servant in the public interest is vested in the President. It is equally settled that such power is distinct from disciplinary dismissal, which ordinarily attracts procedural safeguards, including notice, a hearing, and the assignment of reasons. In advancing their position, the

appellants placed reliance on **Cleoplace M. Motiba & Others v. Principal Secretary, Ministry of Finance & Others** (supra) to underscore that distinction. The respondent's contention, however, calls for a deeper inquiry, namely, whether the mere invocation of "public interest" suffices as a reason in law.

We are persuaded by the respondent's submission that the duty to give reasons is not a matter of procedural nicety, but a substantive requirement anchored in the principles of fairness, transparency, and accountability. As was aptly stated in **James Gwagilo v. Attorney General** (supra), the exercise of public power must be accompanied by reasons, particularly where such exercise adversely affects the rights or legitimate expectations of a public servant.

In the instant case, the letter communicating the respondent's removal merely stated that he was retired "in the public interest," without any further elaboration. For ease of reference, we reproduce the relevant portion hereunder:

"Bw. Komanya Eric Kitwala,

Ex – Mkuu wa Wilaya

Kuh: KUSTAAFISHWA KAZI KWA MANUFAA

YA UMMA

Tafadhali rejea kichwa cha habari kuhusu somo tajwa hapo juu.

2. *Ninapenda kukuarifu kuwa, Rais wa Jamhuri ya Muungano wa Tanzania kwa Mamlaka aliyonayo chini ya Ibara ya 36(1) na (2) ya Katiba ya Jamhuri ya Muungano wa Tanzania ya Mwaka 1977 ikisomwa kwa pamoja na Vifungu vya 5(1) na 24(1) vya Sheria ya Utumishi wa Umma, Sura ya 298, Kanuni ya 29(1) ya Kanuni za Utumishi wa Umma za Mwaka 2003 na Kanuni F.40 ya Kanuni za Kudumu za Utumishi wa Umma Toleo la Mwaka 2009, amekustaafisha kazi kwa manufaa ya Umma kuanzia tarehe 09 Agosti, 2022.*

3. *Kwa kuwa Mafao ya Kiinua Mgongo katika Utumishi wa Kisiasa katika nafasi ya Mkuu wa Wilaya pamoja na gharama za kurudishwa kwenye makazi yako ya kudumu (Place of Domicile) yameshalipwa kupitia Ofisi ya Rais, Tawala za Mkoa na Serikali za Mitaa, utaiipwa mafao yako katika Utumishi wa Umma kwa mujibu wa Kifungu cha 26(1)(e) cha Sheria ya Mfuko wa Hifadhi ya Jamii kwa Watumishi wa Umma, Sura ya 371. Aidha, kipindi cha kuanzia tarehe 28 Julai, 2018 hadi tarehe ya kustaafu kwako kitahesabika kuwa cha likizo bila malipo.*

4. *Mwisho, kwa niaba ya Serikali ninachukua nafasi hii kukushukuru kwa mchango wako katika Utumishi wa Umma kwa kipindi chote ulichofanya kazi na ninakutakia*

*kila la kheri katika maisha yako na familia yako baada ya
kustaafu Utumishi wa Umma.*

Sdg: Xavier M. Daudi

KAIMU KATIBU MKUU (UTUMISHI)"

From the above excerpt, we are at one with Mr. Nyoni to the extent that the cited provisions, Article 36 of the Constitution of the United Republic of Tanzania, 1977, section 24 (now section 26) of the Public Service Act, Cap. 298, rule 29 of the Public Service Regulations, and Standing Order F.40 indeed vest in the President the power to remove a public servant from service in the public interest. However, those provisions cannot be read as dispensing with the duty to give reasons for the exercise of such power.

It is manifest from the letter reproduced above that no explanatory context or indication of the considerations informing the decision was disclosed. The bare invocation of "public interest," without more, falls short of the standard required in law. In our considered view, the decision-maker was under a duty to assign reasons, not as a matter of form, but as an essential component of lawful and fair administrative action.

The requirement to give reasons is deeply rooted in constitutional principles. It enables the affected party to understand the basis of the decision, facilitates the exercise of the right to challenge it, and serves as

a safeguard against arbitrariness and abuse of power. As was underscored in **Tanzania Air Services Limited v. Minister for Labour, Attorney General and the Commissioner for Labour** (supra) and **James Gwagilo v. Attorney General** (supra), the disclosure of reasons is indispensable to the integrity of the decision-making process. In the latter case, the Court emphatically stated:

"... (iii) when removing a civil servant in the public interest, the President is bound to give reasons indicating the public interest to be served; under the Constitution, the civil servant so removed has the right to appeal against, or to apply for judicial review of, that removal and if no reasons are given therefore, that constitutional right will be rendered ineffective and illusory.

(iv) Disclosure of reasons for removal of a civil servant in the public interest is also necessary so as to reduce the possibility of casualness, arbitrariness and abuse of power in the decision-making process and to instil public confidence in it and maintain its integrity, and to satisfy a basic need for fair play".

We are, accordingly, agree with the learned Judge that it is settled that the duty to give reasons is an indispensable element of any fair and

just decision affecting the rights of an individual. The mere invocation of “public interest,” cannot suffice as a reason in law. We are therefore unable to accept Mr. Nyoni's contention that the President is under no obligation to assign reasons. In that regard, Article 33 of the Constitution of the United Republic of Tanzania, 1977, which guarantees the right to fair administrative action, cannot be read narrowly rather, it must be given a purposive interpretation that advances transparency, accountability, and fairness in the exercise of executive authority. We are therefore satisfied that the High Court cannot be faulted for holding that the impugned decision was vitiated by failure to assign reasons. Accordingly, these grounds are devoid of merit and are hereby dismissed.

Turning to the second and third grounds of appeal, which impugn the propriety of the order of mandamus and the relief granted, we are in full agreement with Mr. Webiro, learned State Attorney, that the conditions precedent for the issuance of an order of mandamus were not satisfied. The governing principles, as settled, were not met in the circumstances of this case. In our considered view, once the High Court granted the order of certiorari, it ought to have gone no further. By proceeding to issue an order of mandamus, the learned Judge fell into error. Therefore, that order cannot left to stand instead we direct that the appropriate procedure be

undertaken by the competent authority to determine, in accordance with the law, the appellant's employment status.

In the upshot, we hereby quash, in part, the judgment of the High Court together with all consequential orders emanating therefrom. Accordingly, the appeal succeeds in part to the extent so indicated.

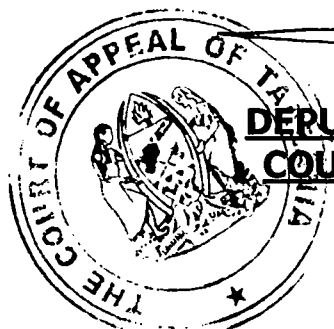
DATED at DAR ES SALAAM this 4th day of April, 2026.

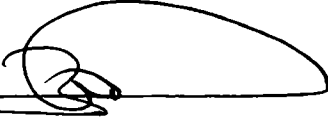
G. A. M. NDIKA
JUSTICE OF APPEAL

Z. G. MURUKE
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

Judgment delivered this 5th day of May, 2026 in the presence of Ms. Grace Lupondo, learned Senior State for the Appellants and Mr. Deogratias Mahinyila, learned counsel for the Respondent and Mr. Ladislaus Msuba, Court clerk; is hereby certified as a true copy of the original.




J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL