

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[ARUSHA SUB – REGISTRY]

AT ARUSHA

MISC- CIVIL CAUSE NO. 21386 OF 2024

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS
OF CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND
MISCELLANEOUS PROVISIONS) ACT, CAP 310 AS AMENDED IN 2019**

AND

**IN THE MATTER OF AN APPLICATION TO CHALLENGE THE DECISION OF THE
MINISTER FOR PRESIDENT’S OFFICE- REGIONAL ADMINISTRATION AND
LOCAL GOVERNMENT TO PROMULGATE: AMRI YA MAREKEBISHO YA AMRI
YA MGAWANYO WA MAENEO YA UTAWALA KATIKA SERIKALI ZA MITAA
(MAMLAKA ZA WILAYA) YA MWAKA 2024, GN NO. 673 OF 2024 DATED 2ND
AUGUST, 2024.**

BETWEEN

JULIUS LAITAYOK.....1ST APPLICANT

LEBOI SAITOTI MAKESEN.....2ND APPLICANT

NGOLUI KARAINA.....3RD APPLICANT

JACOB WILLIAM MAMASITA.....4TH APPLICANT

LOSHIPA OSIRINGETI LEYAN.....5TH APPLICANT

VERSUS

**THE MINISTER OF STATE IN THE PRESIDENT’S OFFICE REGIONAL
ADMINISTRATION AND LOCAL GOVERNMENT.....1ST RESPONDENT**

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

19/03 & 21/05/2025

I.C. MUGETA, J:

The first, second and fifth applicants reside in Arusha Region. The third and fourth applicants reside in the Kilimanjaro Region. All applicants are aggrieved by the promulgation of Amri ya Marekebisho ya Amri ya Mgawanyo wa Maeneo ya Utawala Katika Serikali za Mitaa (Mamlaka za Wilaya) ya Mwaka 2024 G.N. No. 673 of 2024 published by Mohamed Omary Mchengerwa, Minister of State in President's Office Regional Administration and Local Government on 26th June, 2024. The order had, among other things, the effect of delisting the applicants' villages.

Consequently, the applicants are moving this court to grant them leave to apply for order of certiorari to call for, quash and set aside the order for being made ultra vires, without consultation and being irrational and unreasonable. They also would seek prohibition orders against the first respondent from making any order delisting the applicant villages against the law.

The respondents have raised two points of preliminary objections. Firstly, that the application is incompetent and overtaken by events and



secondly, that this court has no jurisdiction to entertain the prayers and reliefs set forth in the chamber summons.

The objections were argued by way of filing written submissions. The learned counsel have made useful and elaborate submissions. However, for the purpose of this decision, I shall address arguments considered most relevant to the determination of the two points raised. I am taking that course after realising that other issues raised goes to the merits of the application. This is not the right time to go that way.

I shall start with the second objection.

Counsel for the respondents has submitted that under section 18 of the Civil Procedure Code [Cap 33 R.E. 2019], any case has to be instituted in a court within the local limits of whose jurisdiction the defendants actually and voluntarily reside, or carries on business or personally works for gain and where the cause of action, wholly or in part, arises. After referring to the provisions of the High Court Registries (Amendment) Rules, 2023 G.N No. 853A of 2023 as amended by the High Court Registries (Amendment) Rules, G.N. 61A of 2024, he concluded that this case ought to have been filed at the High Court – Moshi Registry or the High Court, Main Registry at Dodoma which has jurisdiction over judicial review and constitutional cases all over the country. The reason for

preferring Moshi registry, it has been argued, is that the 3rd and 4th applicants reside in Kilimanjaro Region.

It is my view that basing the argument about jurisdiction on section 18 of the CPC is a serious misconception. That section refers to the defendant and if analogy is anything to go by for purposes of this case, the applicants are not defendants. The respondents can be. In that case they can be sued anywhere. They are based in Dodoma as their headquarters but they have offices in all regions. So, a case can be opened against them in any region or where the cause of action arose. For the purposes of this case, the cause of action arose in both Arusha and Kilimanjaro regions. Therefore, both the Arusha and Moshi High Court – sub registries have jurisdiction. The second objection, I hold, has no merits. It is overrule.

The argument in the second objection is that after promulgation of G.N. No. 673 of 2024, it was later revoked by G.N. 796 of 2024 of 6th September, 2024, therefore, it no longer exists. Counsel for the applicants is of the view that the illegality in G.N. No. 673 of 2024 cannot be cured by rectification, if any, made through G.N. No. 796 of 2024. In their humble view, judicial review examines the legality of the administrative decisions at the time they are made not their subsequent rectification.

I agree with counsel for the applicants. Correction of administrative error in the order, if any, might weaken or even eliminate grounds for the application for orders of judicial review. However, that cannot be a reason preventing aggrieved persons to apply for such orders. Whether the grounds are weak or are eliminated by subsequent actions is a question of merits which cannot be determined as points of preliminary objections.

Counsel for the respondents have cited the case of **Lala Wino V Karatu District Counsel** (Civil Application No. 132 of 2018) [1919] TZCA 46 (1 April 2019, TANZLII) to argue that once an issue is no longer valid for a particular purpose it is overtaken by events. I hold, that is not the case with judicial review. Legality of the decision or the process towards making the decision can be examined by the court regardless of the validity of the decision at the time of the examination. The first objection, I hold, has no merits too.

In the fine, I hold that the two objections are overruled. Hearing of the application to proceed on merits.




I.C. MUGETA

JUDGE

21/05/2025

Court: Delivered in chambers in the presence of Denis Moses for the applicants and Joseph Bundala, State Attorney for the respondent.

Sgd: I.C. MUGETA

JUDGE

21/05/2025