

IN THE HIGH COURT OF TANZANIA

AT DODOMA

CIVIL CASE NO. 14 OF 2003

DAUDI MWATEBELA PLAINTIFF

Versus

**1. THE ATTORNEY GENERAL
2. THE PRINCIPAL SECRETARY
MINISTRY OF HEALTH** }**RESPONDENTS**

02.05.2006 & 16.05.2006.

RULING

MASANCHE, J.

The plaintiff, **DAUDI MWATEBELA**, has filed a simple suit for what is obviously a declaration. He seeks for:

- "1. A judicial declaration that the plaintiff's dismissal from his employment was unlawful.
2. A judicial declaration that the plaintiff is still in the employment of the second defendant.

3. Any other relief(s) as the Honourable Court deems fit to grant."

The plaintiff, apparently, was a nursing officer at the Mirembe Mental hospital, Dodoma. He was, an in charge in one of the Wards. Out of negligence, it is said, he placed three lunatics in one cell. One Lunatic then picked a stone, which he had hidden in the cell, and murdered the other two lunatics with it. He was fired. His appeal to the Headquarters of the Ministry of Health was turned down. He now seeks to challenge the dismissal and prays for the declaration orders.

I agree with the learned State Attorney, Mr. Mayeye, that as long as the prayer is for the prerogative order of declaration, the same must come under the Law Reform (Fatal accident) Miscellaneous Provision Act Cap. 310 as revised by the Edition of 2002. Under that provision, the matter has, however, to come for leave. If leave is granted (in practice ex parte), then, the actual case can be heard. Mr. Njulumu, who also addressed me on the matter, has sought to argue the actual application for the order of declaration. This, he cannot do at the moment.

It has been pointed out that a declaratory judgment is the Courts declaration of the rights and duties of the parties before it.

Its value lies in resolving a dispute by setting out clearly the legal position. It is said that orders of declaration suffer a serious deficiency, like the other prerogative orders of certiorari, amendment and prohibition: These orders are discretionary, orders. Even where an applicant satisfies the court that his employer acted unlawfully, the same court may refuse to grant the remedy, if it feels that the case is not an appropriate one or even where it feels that public policy would demand for such a refusal. (See a book Personal Freedom and The Law in Tanzania by Robert Martin, pages 128 -129).

I agree with Mr. Mayeye that the procedure adopted by the plaintiff is faulty. His application is struck out with costs.



(J.E.C. MASANCHE)
JUDGE

DODOMA
16TH MAY, 2006

Mr. Pande:- S.A for Attorney General/Defendant.
Plaintiff:- Present in person.