

A Department, the Registrar of the College, the applicant himself, and two other people. The applicant made a lengthy explanation in his own defence.

B Subsequently, the committee submitted its report to the first respondent. That report was supplied to the applicant. In short the committee found that the applicant was guilty of insubordination, misconduct, and inefficiency. It was then that the first respondent dismissed the applicant from his temporary employment and later changed the dismissal to termination.

C That being the factual position, can it reasonably be said that the applicant was condemned unheard. The answer to that question, in my considered view, is an emphatic NO. The applicant was heard, and fully heard, at every stage in the saga, and he defended himself accordingly although in the end his defence did not carry the day. All these steps were taken in favour of the applicant who, by terms of his letter of appointment, was liable to termination without notice.

E There was, therefore, no breach of rules of natural justice.

F Let me reiterate here that as I understand the law, orders of *certiorari* and *mandamus* will only be issued where it has been shown that the authority in question has acted without, or in excess of its jurisdiction; or where such authority is shown to have acted with bias; or where there is an error on the face of the record; or where, on the totality of the facts and circumstances disclosed, the authority in question did not act legally or judicially.

G In the instant matter, none of those requirements has been established. For the foregoing reasons, I see no merit in this application. The same is accordingly hereby dismissed with costs.

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SHAKU HAJI OSMAN JUMA v. ATTORNEY GENERAL AND TWO OTHERS A

HIGH COURT OF TANZANIA
AT TABORA B
(Mchome, J)

MISC. CIVIL APPLICATION No. 1 OF 1997 C

Civil Practice and Procedure – Res Judicata – Application for certiorari and mandamus dismissed because of availability of alternative remedy by way of temporary injunction – Application for temporary injunction is subsequently made – Whether the subject matter of the application is res judicata . D

Civil Practice and Procedure – Inherent jurisdiction of the court – Situations in which the inherent powers of the court may be invoked – section 95 of the Civil Procedure Code. E

The applicant filed a suit in the High Court at Tabora. Subsequently he filed an application for a temporary injunction under section 95 and Order XXXVII of the Civil Procedure Code. Earlier, in Civil Application Number 12 of 1998, the applicant had applied for an order of *mandamus* and *certiorari* but that application was rejected. The court declined to grant these orders but specifically ordered that the matter be dealt with by way of an application for temporary injunction. In a preliminary objection learned counsel for the first and third respondents, submitted that the matter was *res-judicata* and secondly, that the case was one in which section 95 of the Civil Procedure Code was not applicable. F

Held: (i) The matter was not *res judicata* because the application for prerogative orders was dismissed on the ground that redress was available through other means and the court specifically cited application for a temporary injunction as one of the alternative remedies; G

(ii) The inherent powers of the court provided under section 95 of the Civil Procedure Code are invoked in situations where the court has authority or jurisdiction to deal with the matter and there is no specific law in place. I

- A (iii) A temporary injunction can be issued not only under Order XXVII, but also under section 95 of the Civil Procedure Code.

Preliminary objections overruled

- B *Mr. Mtaki* for the applicants

Mr. Mujunangoma for the first and third respondents

Case referred to:

- C (1) *Attorney General v. Maalim Kadau and others* [1997] T.L.R. 69
 (2) *Manohar Lal v. Seth Hira Lal* (1962) Supp (1) SCR 450 (1962) RSC 527

Statutory provisions referred to:

- D (i) Government Proceedings Act 1967
 (ii) Civil Procedure Code, Order XXVII, rule 1, Order XXIX, rule 1 and 2, section 151
 E (iii) Civil Procedure Code, section 95 and Order XXXVII, rule 1

RULING

(Dated 26 February 1998)

- F **MCHOME, J:** Mr Rogonzibwa Thiophil Sephurin Mujunangoma, learned counsel for the first and third respondents, has filed two preliminary objections to this application by Mr Mtaki, learned counsel for the applicants, in the application for a temporary injunction.

- H First, Mr Mujunangoma submits that as the Attorney General and the Administrator General are not parties to the original suit, a temporary injunction, cannot be issued against them. He cited Order XXXVII, rule 1 of the Civil Procedure Code and the case of *Attorney General v. Maalim Kadau and others* (1).

- I The second objection is that this matter is *res judicata* at it was dealt with in Application Number 12 of 1998.

A In reply Mr Mtaki submits that this application is filed under Order XXXVII read together with section 95 of the Civil Procedure Code. As for *res judicata* Mr Mtaki submits that in Civil Application Number 12 of 1998 they had applied for Orders of *mandamus* and *certiorari* and the court ordered specifically that the matter be dealt with by way of an application for temporary injunction. B

Let me first deal with the second objection. That is that the matter is *res judicata*. This matter is not *res judicata*.

C The application for orders of *certiorari* and *mandamus* was dismissed as there are other means of seeking redress available to the applicant. The court in Civil Application Number 12 of 1998 cited application for a temporary injunction as one of the alternative remedies. So D the second objection is overruled.

E As for the first objection, I agree with the learned counsel for the first and third respondents that under Order XXXVII, rule 1 of the Civil Procedure Code 1966 a temporary injunction cannot be issued against someone who is not a party to the main suit. But Mr Mtaki, learned counsel for the applicant however, submits that his application is also brought under section 95 of the Civil Procedure Code. Both learned counsel cited the Court of Appeal case of the *Attorney General v. Maalim Kadau and others*, (1) whose relevant part is: F

G In the ruling, the learned judge sets quite correctly the legal position regarding the issuance of a temporary injunction against the Government. He states that the application could not be granted under Order XXXVII of the Civil Procedure Code 1966 because the Government was not a party yet to Civil "Case Number 12 of 1995. The learned Judge also considered the Government Proceedings Act 1967 as amended by Act Number 30 of H 1995 which provides for a period of three months' notice before the Government can be made a party to proceedings. So, he took the view that irreparable damage would be caused to the respondents (then applicants) if the court were to wait for three months before issuing the injunction order. The application was thus granted by invoking section 95 of the Civil Procedure I

A Code. We must at once point out that this was a misapplication of this section. ... It is trite knowledge that the inherent powers of the court provided under this section of the Civil Procedure Code are invoked in situations where the court has authority or jurisdiction to deal with the matter and there is no specific provision of the law in place. Where as in this case the court has no jurisdiction or authority and there are express provisions of the law as was the case here. which provisions were elaborately set out by the learned judge, it was an error on the part of the learned judge to invoke such powers

C Learned counsel had different interpretations of the above quoted passage of the Court of Appeal. Mr Mujunangoma, for the respondents, argues that section 95 is only applicable where there are no specific provisions of the law to deal with the matter. He states that Order XXVII, rule 1 of the Civil Procedure Code provides the specific provisions. Mr Mtaki, for the applicant, on the other hand, submits that the court of appeal quashed the trial judge's injunction because he had no jurisdiction over the whole application.

F I tend to agree with Mr Mtaki's interpretation. Contrary to Mr Mujunangoma's contention, Order XXVII, rule 1 does not provide specifically for a case like this one where someone who is not a party to a suit tampers with or tries to alienate property which is the subject-matter of a pending suit.

Section 95 of the Civil Procedure Code 1966 provides:

G Nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court.

H In **Mulla, the Code of Civil Procedure**, (12 ed), page 1007, is cited the case of *Manothar Lal v. Seth Hira Lal* where it was held that the court has powers under section 151 (equivalent to our section 95) to issue injunction in cases not falling within Order XXIX, rules 1 and 2 (equivalent to our Order XXVII, rules 1 and 2) of the Civil Procedure Code.

A A temporary injunction can be issued not only under Order XXVII, but also under section 95 of the Civil Procedure Code. So these objections are overruled with costs.

ARUSHA INTERNATIONAL CONFERENCE CENTRE v. EDWIN WILLIAM SHETTO

COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(Lugakingira, J.A.)

CIVIL APPLICATION No. 69 OF 1998

E *Court of Appeal Rules – Applications – Duty to serve Notice of Motion and accompanying affidavits – Whether the duty to serve is on the Court Registry or on the applicant – Rules 52(1) and 53(1) of the Tanzania Court of Appeal Rules 1979.*

F *Court of Appeal Rules – Notice of Motion-Failure to serve Notice of Motion on the respondent two clear days before the hearing – Effect thereof.*

G The respondent in this matter raised a preliminary objection and prayed for the application to be struck out because the applicant had not served him with the Notice of Motion and accompanying affidavits two clear days before the hearing as required by rule 52(1) of the Court of Appeal Rules 1979. The applicant argued that because rule 52 does not specify whose duty it was to effect service, the duty was not on the applicant.

H **Held:** (i) The duty to serve a Notice of Motion and its accompanying affidavit(s) is placed on the applicant;

I (ii) The purpose of the rule requiring service of notice on the respondent is to ensure a reasonable opportunity to the respondent to consider the application and, if