IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DODOMA

MISCELLANEOUS CIVIL CAUSE NO. 12670 OF 2025

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 R.E. 2023];

AND

IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) (JUDICIAL REVIEW PROCEDURE AND FEES) RULES GN. No. 324 OF 2014;

AND

IN THE MATTER FOR LEAVE TO CHALLENGE KANUNI ZA MAADILI YA UCHAGUZI WA RAIS, WABUNGE NA MADIWANI ZA MWAKA 2025

BETWEEN

KUMBUSHO KAGINE.....1ST APPLICANT

BUBELWA KAIZA.....2ND APPLICANT

VERSUS

TUME HURU YA TAIFA YA UCHAGUZI.....1ST RESPONDENT

THE ATTORNEY GENERAL OF THE

UNITED REPUBLIC OF TANZANIA.....2ND RESPONDENT

RULING

3rd & 11th July, 2025

KAGOMBA, J.:

This ruling is in respect of the applicants' application for leave to apply, by way of judicial review, for orders of *certiorari* and prohibition against the

subsidiary legislation styled as *Kanuni za Maadili ya Uchaguzi wa Rais, Wabunge na Madiwani za Mwaka 2025* published via Government Gazette No. 16 Vol. 106 dated 18th April 2025 (henceforth "the Regulations"). The Regulations have been promulgated by the 1st respondent to govern the ethical aspects of the Presidential, Parliamentary and Counsellors elections slated for October, 2025.

The applicants impugn the Regulations for being procedurally and substantively *ultra vires*; unreasonable, irrational, containing errors of law on face of the record and violative of other rules and regulations as well as being promulgated without consultation. Through Court's order of *certiorari,* the applicants want the Regulations quashed and set aside. And, vide an Order of prohibition, they aim at prohibiting the 1st respondent from continuing with electoral process by using the challenged Regulations. They also seek any other order this Court may deem it fit to grant.

It's the applicants' further prayer made under rule 5(6) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rule, 2014 GN No. 324 of 2014, that the leave, once granted, operate to stay the use of the Regulations pending hearing and final determination their intended application for judicial review.

This application, which is brought under a certificate of urgency and supported by a joint affidavit of the applicants, is preferred under section 2(3) of the Judicature and Application of Laws Act (Cap 358 R.E 2023); Section 18(1) and 19(3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 R.E 2023] together with rule 5(1) (2) & (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rule, 2014 GN No. 324 of 2014 (Henceforth "GN 324 of 2014").

On their side, the respondents have filed a joint counter affidavit affirmed by Mr. Seleman Mtibora, the Director of Legal Services of the 1st respondent, which was replied to by the applicants. The respondents also filed a reply statement opposing the application.

At hearing, Messrs. Mpale Mpoki and Jerbra Kambole, both learned Advocates represented the applicants while Mr. Mark Mulwambo, learned Principle State Attorney accompanied by Messrs. Erigh Rumisha and Edwin Webiro, both learned State Attorneys, represented the respondents.

It is significant to point out in the very outset that while granting of leave is a check-list affair, Counsel for both sides were in agreement that the

main criteria for granting leave were fulfilled by the applicants save for demonstrating that they have sufficient interest in the matter. For clarity and avoidance of the doubts, parties do not dispute on the timeliness of filing the application and existence of an arguable case, which are among the three main criteria for granting leave according to the decision of the Court of Appeal in **Emma Bayo vs Minister for Labour and Youths Development & Others**, Civil Appeal No. 79 of 2012 (CAT at Arusha).

However, according to Mr. Kambole, who moved the Court on the leave application on behalf of the applicants, the applicants have not only established that they filed the application within statutory six months from promulgation of the impugned Regulations, and have an arguable case but also have sufficient interest in the matter, hence the application has met all the three main criteria stated in **Emma Bayo's** case (supra).

Elaborating, Mr. Kambole submitted that the applicants have sufficient interest in the application because in terms of rule 4 of GN 324 of 2014, they believe that their interest, as registered voters who intend to vote in the forthcoming elections, have been or will be adversely affected by the impugned Regulations.

The learned Counsel further argued that at this permission stage, the Court ought to only consider an interest of the applicants in the balance, leaving a detailed consideration of such interest to be determined at the judicial review stage. He cited the decision of this Court in **Bob Chacha Wangwe & Others vs Minister, President's Office Regional Administration and Local Government & Another**, Misc. Civil Cause No. 19721 of 2024 to support this contention.

To convince the Court that the applicants have interest in the application, the learned Counsel, advanced six reasons: **One**; the words "*washiriki wa uchaguzi*" (literary: election participants) used in the preamble of the challenged Regulations refers to the general public, hence the applicants are included. **Two**; the applicants' have averred that they are citizens of Tanzania, of age of majority and are eligible to vote and be voted. **Three**; the applicants have averred that they are registered voters, hence they have a right to vote and be elected. He added here that since the interest to be demonstrated according to rule 4 of GN 324 of 2014 can also be future-focused, and since the process of nomination of candidates by political parties is not concluded yet, the applicants may vie for electoral positions as candidates. **Four**, the applicants have averred that they have

interest in a free and fair election in the country. **Five**; the applicants have averred that they have interest in the Regulations as voters and also have interest to vote the candidates of their choice, and **six**; the Regulations establish rights and responsibilities to candidates, members of political parties and their followers, who may not be members, hence such responsibilities become a civic duty on every person as per Article 26(1) of the Constitution of United Republic of Tanzania, 1977 (as amended) (The "Constitution").

Having cited those reasons, Mr. Kambole urged the Court to consider that the applicants have the right to approach it, which right is guaranteed under Article 13 (6) (a) of the Constitution, as public litigants. The decision of this Court in **Tanzania Women Lawyers' Association vs Minister for Constitutional and Legal Affairs**, Misc. Cause No. 61 of 2022, was referred to in this regard.

Finally, the learned Counsel urged the Court to determine the standing of his clients by shying away from the outdated techniques of *locus standi*.

On his side, Mr. Mpale Mpoki prayed the Court, under Rule 5(6) of GN 324 of 2014, to order that the leave, once granted, should operate as a stay

of application of the Regulations until the final determination of the application for judicial review. He argued that such an order would help prevent this application to be rendered nugatory; to protect the interest of the applicants whose loss cannot be made up by damages as is the case for domestic law cases, and to give comfort to the applicants that while the application is going on in Court their rights will not be taken away. The decision of this Court in **Latan'gamwaki Ndwati & 7 Others vs Attorney General**, Misc. Civil Application No. 178 of 2022 and Kenya High Court decisions in **Kenya Universities and Colleges Central Placement Services vs Kenya Medical Training College and Attorney General**, Misc. Application No. 291 of 2015, and **Taib A. Taib vs The Minister for Local Government & 3 Others**, High Court of Kenya at Mombasa, were cited to support the issuance of the stay order.

According to Mr. Mpoki, the intention of the applicants is not to suspend the electoral process but to enable this Court look at the legality and reasonableness of the electoral code of conduct, firstly on the procedure it was enacted but also its reasonableness in terms of its parent Act and the Constitution as well. He also argued that the balance of convenience between the parties weighs heavily in favour of the applicants for a reasons

that if the case is rendered nugatory there is no way the applicants will be compensated.

In reply to the leave application, Mr. Erigh Rumisha strongly opposed the contention that the applicants have sufficient interest in the matter. He cited the case of **Pavisa Enterprises vs The Minister for Labour Youth Development and Sport & Another,** Misc. Civil Cause No, 65 of 2003, High Court at DSM to argue that existence of sufficient interest in the matter is a requirement for granting leave.

According to Mr. Rumisha, the applicants have not demonstrated to have sufficient interest in the matter to which the application for leave relates for the following reasons:

Firstly; the applicants are not stakeholders by virtue of section 162 of the *Sheria ya Uchaguzi wa Rais Wabunge na Madiwani Na. 1 ya mwaka 2024* under which the impugned Regulations was enacted. He elaborated that in the impugned Regulations the only stakeholders are the Government, candidates, political parties and the 1st respondent. According to him, the Regulations is specifically for those four stakeholders and not the applicants.

Secondly; the applicants have stated in paragraph 6 of their reply to the Counter Affidavit that they are not stakeholders. Hence, being strangers to the Regulations they cannot be said to have sufficient interest in the matter relating to the Regulations.

Thirdly; there is a serious variation of the names of the applicants who are Kumbusho Kagine and Bubelwa Kaiza and the names of Kumbusho D. Kagine and Bubelwa E. Kaiza who are shown to be registered voters in annexure **Tume-1**, *Kadi ya Mpiga Kura*. Being different people, as there is also no affidavit to show that such names are used interchangeably, the argument that they have sufficient interest by virtue of being registered voters and Tanzanians lacks legs to stand on.

The learned State Attorney urged the Court to follow the footsteps of the Court of Appeal in **Charles Christopher Humphrey Richard Kombe vs Kinondoni Municipal Council,** Civil Application No. 456/17 of 2021 by hesitating to treat those different names as belonging to the same persons. According to the learned State Attorney, the Court of Appeal held that such variation of names cannot be cured even by a supplementary affidavit.

Fourthly, the argument that the applicants might be candidates who will vie for electoral positions before closure of the window for nomination of candidates, Mr. Rumisha dismissed it as an assumption, not averred in the applicants' affidavit.

On the argument that the applicants have a *prima facie* case, he submitted that yet there was no proof of interest is the matter and that such conditions must be met cumulatively.

On the right to be heard being guaranteed under article 13(6) of the Constitution, he submitted that such a right has to be exercised by observing the dictates of the law.

On the applicants' insistence that they are discharging their civic duty; he again replied that they have to follow the law, particularly rule 4 by demonstrating that they have interest in the matter.

The learned State Attorney further submitted that the applicants are supposed to demonstrate their interest in their affidavit, and the same interest has to be determined at this stage as per the dictates of rule 4 of GN 324 of 2014 and not to demonstrate such interest during judicial review stage.

For the above reason, he distinguished the case of **Bob Chacha Wangwe** which he finds to be in conflict with the decision of the Court of Appeal in **Emma Bayo's** case and rule 4 of GN 324 of 2014 as to the requirement that applicants must demonstrate sufficient interest at leave stage. He also cited the decision of this Court in **Legal and Human Right Centre & 6 Others vs Minister for Information, Culture, and Sports & 2 Others**, Misc. Civil Application No 12 of 2018 at page 23, to support this contention.

Regarding the holding in **Tanzania Women Lawyers' Association** (Supra), the learned State Attorney replied that the interest must be genuine and sufficient to be proved by pleadings and must also not be remote.

Replying to the submission by Mr. Mpoki on stay order, Mr. Rumisha **firstly**, pointed out that granting of such a prayer is the discretion of this Court which has to be exercised judiciously. He also opposed it for not being sufficiently supported by the applicants' affidavit, hence a mere statement from the bar. Likewise, he found the argument on balance of convenience lacking support of the affidavit.

Secondly, the learned State Attorney opposed the prayer for uncertainty as to the filing of the application for judicial review, which is not yet before this Court and it is unknown if, and when the same will be filed. He therefore submitted that such a prayer is baseless and, in the current circumstances, this Court should not exercise its discretion based on speculation. The decision of this Court in **Boniface Mwabukusi vs Tanganyika Law Society**, Misc. Application No. 1650000 of 2024 was referred to.

According to Mr. Rumisha, by seeking a stay order, the applicants are suggesting that there should be no Code of Conduct to govern the forthcoming elections, a situation that will make the stakeholders operate in a vacuum. In his views, on the balance of convenience, such an order will affect more the public interest than the applicants' as resources have been mobilized and put in preparation of the elections. He cited the case of **Alhaji Muhidin A, Ndolanga & Another vs Registrar of Sports and Sports Association & Others,** Misc. Cause No. 54 of 2000 for a contention that where the private interest and the public interest are in conflict, public interests should prevail.

In the above circumstances, he prayed for dismissal of the prayer and urged the Court to uphold the balance of convenience in favour of the public interest.

In the very end he prayed for dismissal of the application for leave as the applicants do not have sufficient interest. He also prayed that the application for stay of the Regulations be dismissed with costs for want of merit.

In his rejoinder Mr. Kambole reiterated his submission in chief. He added that the Regulations are not for stakeholders but for the entire public. He clarified that the stakeholders are there for the purpose of signing, not for owning the same. According to him, the law being for the general public, it's binding upon the public not specific individuals.

On the applicants vying for electoral positions, he rejoined that they have stated in the affidavit that they are eligible to be voted.

On variation of names, he rejoined that the difference is insignificant as it pertains to the initials of the middle names only. He added that if there is any difference, the respondents are at liberty to call the applicants for cross examination.

On the cited case of **Charles Christopher Humphrey**, he argued that the same is distinguishable because it was dealing with different names in the notice of motion and the affidavit, while in the current case there are same names in the chamber summons and the affidavit.

In the end, the learned Counsel urged the court to determine this matter by looking at the merit of the application rather than on technicality.

When Mr. Mpoki was called upon to rejoin on the prayer for stay of the Regulations, he reiterated that the prayer is within the parameters of rule 5(6) of GN No. 324 of 2014 which grant this Court jurisdiction to the order.

Regarding the decision in case of **Boniface Mwabukusi** (supra), the learned Counsel clarified that the judge who hears the leave application is the one who also determines the prayer for stay of the matter being complained of.

Mr. Mpoki, further urged the Court to look at paragraph 35 of the affidavit to note that this is not a private litigation.

On the balance of convenience, he rejoined that the question of wastage of public resources does not come in for a reason that this

application is about a right to vote which comes once in five years. And this marked the end of the rival submissions by the learned minds.

Having carefully read and considered the above submissions in light of the law, there are two main issues to be determined as follows:

1. Whether the applicants have met the legal requirements for granting of leave to file their application for judicial review?
2. If leave is granted, whether it will be appropriate for this Court to exercise its discretion to grant the prayer for stay of the Regulations.

Starting with leave application, the dispute between the learned Counsel is not on any other criteria for granting leave, but whether the applicants have demonstrated sufficient interest in the application for judicial review, which is to be filed upon granting of leave. As intimated earlier, the prospective judicial review application is intended to challenge the promulgation of the Regulations, which have been made under the provision of section 162 of *Sheria ya Uchaguzi wa Rais Wabunge na Madiwani Na. 1 ya mwaka 2024.* This provision states:

'162.-(1) ***Kwa madhumuni ya kusimamia uchaguzi*** *wa haki, huru na amani, na* ***baada ya kushauriana na vyama vyote vya siasa na Serikali****, Tume itaandaa na kuchapisha katika Gazeti la Serikali Kanuni za Maadili ya Uchaguzi* ***zitakazoainisha maadiii ya vyama vya siasa, Serikali na Tume*** *wakati wa kampeni za uchaguzi na uchaguzi na utaratibu wa utekelezaji wake.*

(2) ***Kanuni za Maadiii ya Uchaguzi zitasainiwa na- (a) kiia chama cha siasa; (b) kiia mgombea kabia hajawasilisha fomu ya uteuzi; (c) Serikaii; na (d) Tume, na zitapaswa kuzingatiwa na wahusika wote waiiosaini'.*** [Empasis added]

Reading the above quoted provision of the law, for what it clearly states in subsection (1) and (2), the law enacts that, for purposes of administering a fair, free and peaceful election, the 1st respondent, shall after consultation with all political parties and the Government, promulgate Code of Conduct to be published in the Government Gazette. Apparently, the impugned Regulation is a creature of this provision of the law. The provision also stipulates the purpose of the Code of Conduct and categorically states who are to be consulted before promulgation; and it mentions who are to sign and be bound by it. These are; the political parties, candidates, the

Governments and 1st respondent. As correctly submitted by Mr. Rumisha, the law categorically specifies its stakeholders.

Under subsection (1), the Act is categorical that the Code shall govern the ethical affairs of the political parties, Government and 1st respondent during election campaigns and the election itself. Therefore, it looks obvious to me that this is a specific law for a specific group of stakeholders made in almost the same way court decisions are rendered either in *rem, (*i.e., binding on all the people) or *in personam,* (i.e., for specific parties involved).

The same law also enacts on matters for the entire public such as registration of voters and their conduct on the date of voting, etc.

The question may be posed as to how the above provision of section 162 relates with applicants' sufficient interest in this matter. It is common knowledge, and the learned State Attorney correctly submitted, that demonstration of sufficient interest in the matter to be adjudicated in judicial review is a prerequisite for granting of leave, and the same has to be done through an affidavit specifically stating facts to support such interest. In **Emma Bayo**, the Court of Appeal was categorical that it is at the leave stage where an applicant must establish that he has sufficient interest in the

matter. The purpose of this requirement is well described by Clive Lewis, in ***Judicial Remedies in Public Law***, 2nd Edition at page 263 where he writes:

> '*The requirement of permission is designed to filter out applications which are groundless or hopeless at an early stage. The purpose is to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints of administrative error and to remove the uncertainty in which public authorities might be left'*.

While I do not find the grounds advanced by the applicants to be trivial, and I think the same represent a serious arguable case, the applicants have not been able, vide their affidavit, to convince this Court as to how they are **sufficiently interested**. To say the least, one wonders where are the aggrieved stakeholders whose interest in the matter could, undoubtedly be recognized. Without them being before the court, what is stated by the applicants in grounds 6.1, 6.2, 6.3, 6.4 and 6.5 of the Statement is rendered vanity in view of the fact that the applicants are mere neighbours, and not the owners of the right to sue, as far as the law on this matter is concerned. Even with the pleading in ground 7.0 that the applicants have interest in a free and fair election, that can only be perceived as a remote and not sufficient interest in the matters raised.

Based on the above reason, and the fact that there are variations of names of the applicants as shown in the affidavit and those used in the voters' registration cards (annexure **Tume- 1**), and there being no affidavit to show that the names are interchangeable, I form a firm view that the applicants have failed to demonstrate that they have sufficient interest in the matter. Hence, the application for leave is wanting.

Consequently, the prayer for stay of the Regulations lacks legs to stand on. All other arguments made by the Counsel for the applicants have been duly noted but cannot change anything in view of the findings that the Regulations are for specified stakeholders, the applicants being excluded.

Based on the above reasons, the application is dismissed for lacking in merits. No order as to costs.

Dated at **Dodoma** this **11th** day of **July**, **2025.**

HIGH COURT OF TANZANIA

A. S. KAGOMBA
JUDGE