DR. LUDWIG SONDASHI v BRIGADIER GENERAL GODFREY MIYANDA, MP (Sued as National Secretary of the Movement for Multi-Party Democracy) (1995) S.J. 1 (S.C.)

SUPREME COURT
NGULUBE C.J., BWEUPE, D.C.J., AND GARDNER, J.S.
3RD FEBRUARY, 1995.
(S.C.Z. JUDGMENT NO. 1 OF 1995)

Flynote

Civil procedure - Decisions of domestic tribunals - Judicial review commenced by writ - Judicial review - Appropriate matters for - Voluntary association - Declaration of rights - To be instituted by writ not application.

Headnote

The appellant had been expelled from the respondent political party and he sought a judicial review and a declaration that he had been wrongly expelled. Trial Court found that the wrong procedure had been adopted as respondent was a society dealing with private matters. The application was dismissed. On appeal to the Supreme Court, question to be considered was whether the tribunal against which the order was sought is one dealing with public law. Respondent, a political party and in its domestic concerns a private association, its tribunals dealing with private, not public, law. Appellant was entitled to come to court but had adopted the wrong procedure.

Held:
(i) The proper course would have been to have issued a writ claiming a declaration and injunction, not by way of application for review.

The matter is one in which proceedings, instead of being refused, should continue as if they had begun by writ, for which purpose matter sent back to the High Court.

Cases referred to:
(1) John v Rees & Ors (1969) 2 ALL E.R. 274
(2) Lewis v Heffer & Ors (1978) 3 ALL E.R. 354.

For the Appellant: In Person
For the Respondent: E. Silwamba and M. S. Malambo of Malambo & Silwamba and Co.

Judgment

GARDNER, J.S.: delivered the judgment of the court.

This is an appeal against an order of the High Court dismissing an application by way of judicial review for a declaration that the appellant had been wrongly expelled from the respondent political party. A preliminary objection was taken at the hearing before the lower court by the respondent on the grounds that it was an inappropriate case for judicial review. The learned trial judge found that, the respondent being a society dealing with private matters, this was not an appropriate case for judicial review and the application was dismissed. The appellant appeals against that ruling.

In the course of his appeal the appellant indicated that if the court were to order that the matter be sent back to the High Court and tried as if the matter had originally arisen by the issue of a writ he would withdraw his appeal in respect of the judicial review and accept such an order.

Mr Malambo on behalf of the respondent at first argued that this was not suitable case for hearing as it it had been commenced by issue of a writ, but, after comments by the court, he conceded that an order for trial on that basis would be appropriate provided clients were awarded the costs. Although this matter will be decided as a result of concessions on the part of both parties, it is necessary for this court to indicate its findings in respect of the question of which cases should come by way of judicial review. Judicial review has taken the place of the old prerogative writs of *mandamus*, *certiorari* and prohibition and those writs were issued because of the supervisory position of the High Court over inferior courts and over tribunals dealing with matters of public law. the question to be considered therefore, is always whether the tribunal against which an order is sought is a tribunal dealing with public law. In this case we have no hesitation in agreeing with the learned trial judge that a political party so far as its domestic concerns are concerned is a private association and its tribunals deal with private law not public law. We say this despite the fact that the result in this case would be that the appellant would lose his seat in Parliament, which of course is a public matter, but that fact in itself does not affect the functional status of the tribunal about which the court is being asked to concern itself, that is, as a private tribunal. In this connection, it is of interest to note that in the United Kingdom the cases of *John v Rees and Ors* (1) and *Lewis v Heffer & Ors* (2) which were cases relating to the Labour Party, a political party in the United Kingdom, in which it was argued that decisions had been improperly arrived at according to the rules of the organisation, were both commenced by writ, and similarly, in this country, cases relating to domestic tribunals such those of political parties should be commenced by writ.

Dr Sondashi did indicate that he was concerned that the conduct of the tribunal in the Movement for Multi-Party Democracy should be the subject of scrutiny by the courts and we assure him that the courts have power to investigate private tribunals and institutions which have made orders, such as expulsion orders, to ascertain whether they had the power to make the orders, whether they did so in accordance with such power and whether they followed the rules of natural justice. there is no doubt, therefore, that the appellant is entitled to come before the courtes; the only question is what manner of instituting proceedings should he adopt. the proper course, as we have indicated would have been to issue a writ claiming a declaration and an injunction if appropriate. We are quite satisfied that this case comes within the terms of the editorial note in the White Book 1993 Edition 53/1-14/49 which reads:

> "Where the application for judicial review seeks relief in the form of declaration, an injunction or damages, the court has power, if it considers that such relief should not be granted in an application for judicial review, but might have been granted it is had been sought in an action begun by writ, to order that the proceedings, instead of being refused, should continue if they had been begun by writ."

In this case obviously it would have been better had the attention of the learned

trial judge been drawn to that power, but as it was not, it will have to be put right on this appeal.

For the reasons which we have given the appeal as to the application for judicial review is dismissed. the appeal as to the amendment of the proceedings is allowed. the case is sent back to the High Court to deal with the action as it it had been commenced by writ. Costs of this appeal to the respondent.

Appeal partly allowed and partly dismissed