

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

LAND APPEAL NO. 18 OF 2022

(Arising from Application No. 176 of 2014 District Land and Housing Tribunal for Bukoba)

NESTORY PAULO RUGARABAMU..... APPELLANT

VERSUS

KATTY KATEGA..... 1ST RESPONDENT

MATHIAS RWEYEMAMU..... 2ND RESPONDENT

RULING

27th October and 3rd November, 2023

BANZI, J.:

The appellant is before this Court challenging the decision of the District Land and Housing Tribunal for Bukoba (the Tribunal) after striking out Application No. 176 of 2014 on the ground that, MHOLA, a registered legal aid provider has no *locus standi* to institute and represent the applicant/appellant in the said application. In his reply to the memorandum of appeal, the first respondent raised preliminary objection on a point of law to the effect that:

"This appeal is in contravention of the Legal Aid Act for failure to obtain court order or certificate for Legal aid before representation of the Appellant."

Likewise, the second respondent raised similar point of objection to wit:

"MAMA'S OPE ORGANISATION FOR LEGAL ASSISTANCE (MHOLA) has no power to draw civil legal proceedings in terms of memorandum of appeal and represent the Appellant in this appeal without first being granted Legal Aid Order to the appellant to file this appeal before this court contrary to sections 27 (a) (b) and 28 (1) (2) of the Legal Aid Act No. 1 of 2017. And (sic) Certificate under Regulation 31 and 9th schedule of the legal aid regulations, 2018 G.N NO. 44 of 2017."

At the hearing of preliminary objection, the appellant was represented by Ms. Theresia Bujiku, learned counsel from MHOLA legal aid provider whereas, Mr. Pereus Mutasingwa, learned counsel appeared for the first respondent while the second respondent who is also an advocate appeared in person, unrepresented.

In the main, Mr. Mutasingwa is challenging the competence of this appeal because the legal aid provider who is representing the appellant *i.e.*, MHOLA had neither obtained the court order nor a certificate before representing indigent person. In that regard, he argued that, the provisions of section 27 of the Legal Aid Act [Cap.21 R.E. 2019] ("the Act") and

regulation 31 of the Legal Aid Regulations, 2018 ("the Regulations") have not been complied. It was also his contention that, the appellant being a male cannot be represented by MHOLA, a registered Non-Governmental Organisation (NGO) which provides legal aid to women, widows and children. Apart from that, he challenged the procedures adopted by MHOLA on eligibility test and that, the provisions of section 28 (1) of the Act were not complied with for want of notification to opponent parties and court. Therefore, he prayed for this appeal to be struck out with costs for being incompetent.

On his side, the second respondent challenged the notification filed by MHOLA for contravening section 28 (1) (2) of the Act, and thus a nullity. He added that, there was no certificate issued under regulation 31 of the Regulations. He further insisted that, the appellant does not fall within the scope of MHOLA which deals with women and children. In that regard, he prayed for his objection to be sustained and the appeal be struck out with costs.

In her reply, Ms. Bujiku argued that, section 21 of the Act does not require the certificate from court because indigent person is permitted to apply for legal aid service directly to legal aid provider. In the instant matter, the appellant went directly to MHOLA who processed his application

according to law and the notification was made orally. Concerning applicability of section 27 of the Act, she submitted that, the same is applicable where it appears to the court that, the person before it has insufficient means to enable him to obtain legal services, it issues a certificate for that person to be given legal aid pursuant to regulation 31 of the Regulations and rule 3 of the Judicature and Application of Laws (Legal Aid in Civil Proceedings) Rules, 2019 ("the Rules"). She added that, MHOLA as a registered legal aid provider is prohibited under section 44 (1) of the Act to discriminate a person seeking legal aid based on gender, religion, race, tribe or political affiliation. Thus, despite being a male, the appellant is represented by them because the law prohibits discrimination. Finally, she prayed that where this Court finds that the appellant is not eligible to be represented by MHOLA, they should be withdrawn from the conduct of this case and the appellant be allowed to defend his appeal.

In his rejoinder, Mr. Mutasingwa insisted that, whether the indigent person is represented pursuant to section 21 or 27 of the Act, the issue of obtaining certificate of court is mandatory, because both sections require the certificate by court or certifying authority. According to him, failure to obtain such certificate under section 27 of the Act and rule 3 of the Rules, makes this appeal incompetent subject to be struck out with costs. On his part, the

second respondent insisted that, the certificate is mandatory before the indigent is represented because it is a tripartite contract between the indigent, the court and the opponent party and that is why it has to be served to the opponent party.

Having considered the rival submissions of both parties, the main issue for determination is whether the two points of preliminary objection have merit.

A close look at the submissions of Mr. Mutasingwa and the second respondent reveals that, the centre of their grievance is on three issues. One, section 27 of the Act as well as regulation 31 of the Regulations were not complied with for lack of certificate from court authorising MHOLA to represent the appellant. According to them, whether representation of indigent is a product of section 21 or 27, both sections require the certificate by court. Two, there was no notification issued under section 28 of the Act. Three, the appellant being a male is not illegible to be represented by MHOLA because they provide services to women, widows and children. On the other hand, it was the contention of Ms. Bujiku that, the representation by the legal aid provider arises from section 21 of the Act does not require the order or certificate from court.

It is worthwhile underscoring that, from its long title, the basic objectives of the Act are, among other things to regulate and coordinate the provision of legal aid services to indigent persons and to recognise the services of paralegals in those regards. In that context therefore, in the views of this Court, by enacting this law, it was not the intention of the legislature to create hurdles to access to justice.

Like waters flowing down the stream, there are two categories of access to legal aid services as envisaged under the Act. Firstly, under section 21, an indigent person who intends to access legal aid services may approach any legal aid provider to apply for such services. It is upon that legal aid service provider (and not the court) to determine eligibility of that indigent person. In the second category, under section 27, it is the court, of course and other adjudicatory tribunals that are empowered to determine such eligibility taking into account interests of justice and insufficiency of means of indigent persons. It is the latter category, not the former under section 21, that require the issue of a certificate. Therefore, to say that, an indigent person requires a certificate under both circumstances *i.e.*, under section 21 and 27, is a misplacement of an argument.

In record, in this case, it is clear that, the appellant approached MHOLA, a registered legal aid provider, which exercised its authority under

section 21 of the Act. It was not rather a situation where the appellant was before a judge, magistrate or of an adjudicatory tribunal, who would be required to issue a certificate.

Moreover, this Court is not moved by the argument that, owing to the objectives of MHOLA, that the appellant being neither a woman nor child would not be eligible, because the Act under section 44 prohibits such discrimination. In which case therefore, that discriminatory objective ceases to apply and MHOLA has authority to represent males including the appellant.

Apart from that, it is not disputed that, MHOLA did not issue a notification pursuant to section 28 of the Act throughout the proceedings before District Land and Housing Tribunal (the Tribunal). The same was only issued when the amended memorandum of appeal was filed in this Court. The question in these regards would be whether that failure knocks down the leg of this appeal. It is the considered view of this Court that, the respondents were not prejudiced by that, because they had knowledge right from the beginning at the Tribunal that, the appellant is represented by a legal aid provider. Therefore, the appeal stands for being competent.

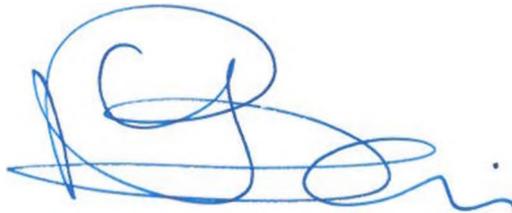
That being said, I find no speck of merit on the preliminary objection on both points and I dismiss them accordingly. Each party shall bear its own costs.

It is so ordered.



I. K. BANZI
JUDGE
03/11/2023

Delivered this 3rd day of November, 2023 in the presence of the appellant and in the absence of the respondents.



I. K. BANZI
JUDGE
03/11/2023