

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM SUB REGISTRY)  
AT DAR ES SALAAM**

**CIVIL CASE NO.131 OF 2023**

**MUFUNGO LEONARD MAJURA.....1<sup>ST</sup> PLAINTIFF**  
**ELIKIRA FANUEL KWEKA.....2<sup>ND</sup> PLAINTIFF**  
**HALIMA OMARY KAMBWIRI**  
*(as administratrix of the Estate*  
*of the late **OMARY SHAIBU KAMBIWRI**)..... 3<sup>RD</sup> PLAINTIFF*  
**NOYA JOHN CONRAD..... 4<sup>TH</sup> PLAINTIFF**  
**SALIMA RAJABU KIZIGO..... 5<sup>TH</sup> PLAINTIFF**  
**MRS. ABNELI SALATIERI MBALLA..... 6<sup>TH</sup> PLAINTIFF**  
**IRENE BARAZA SALEHE..... 7<sup>TH</sup> PLAINTIFF**  
**IRENE BABAZA SALEGE** *(as administratrix of the*  
*Estate of the late Galio Bango Kisesa) ..... 8<sup>TH</sup> PLAINTIFF*  
**ANTHONY KABIKA VIGELO** *(as administrator of the*  
*of the Estate of the late **ALLY MWALIMU SHOMVI**) ..... 9<sup>TH</sup> PLAINTIFF*  
**OMARI SALUM NGALOMBA..... 10<sup>TH</sup> PLAINTIFF**  
**FLORENTINA PAUL NGIMBA** *(as administratrix*  
*Of the Estate of the late **NGIMBA MARY PAUL**) ..... 11<sup>TH</sup> PLAINTIFF*  
**MAJOR MUSSA SELEMANI KINGAI..... 12<sup>TH</sup> PLAINTIFF**  
**OMARY RAJABU REMMY..... 13<sup>TH</sup> PLAINTIFF**  
**ALLY MASSEGEDO JUMA MGWENO** *(as administrator*  
*Of the Estate of the late **MASEGEDO JUMA MGWENO**) ..... 14<sup>th</sup> PLAINTIFF*

**VERSUS**

**THE HIGH COURT OF THE UNITED REPUBLIC  
OF TANZANIA (LAND DIVISION) ..... 1<sup>ST</sup> DEFENDANT**

**THE JUDICIARY SERVICE..... 2<sup>ND</sup> DEFENDANT**

**THE ATTORNEY GENERAL FOR THE GOVERNMENT**

**OF THE UNITED REPUBLIC OF TANZANIA ..... 3<sup>RD</sup> DEFENDANT**

## **RULING**

**S.M. MAGHIMBI, J:**

Before this Court, the plaintiffs above named have filed the instant suit tabling their claim against the three Defendants herein praying for judgment and decree against the defendants jointly and severally as follows:

- (i) An order directing the Defendants jointly and severally to pay the Plaintiffs severally their money in the form of interest accruing on their unpaid principal sum from 9.2.2016 to the tune of Tzs. 2,436,658,312/= in the proportions appearing in Table C, hereto, that is, an order for payment you the Defendants to each of the Plaintiffs on this limb as follows:-

- (a) Tzs. 232,109,472 for the 1st Plaintiff.
- (b) Tzs. 332,511,962 for the 2nd Plaintiff.
- (c) Tzs. 196,004,033 for the 3rd Plaintiff.
- (d) Tzs. 92,846,385 for the 4th Plaintiff.
- (e) Tzs. 82,652,799 for the 5th Plaintiff.
- (f) Tzs. 194,782,250 for the 6th Plaintiff.
- (g) Tzs. 246,113,706 for the 7th Plaintiff.
- (h) Tzs. 232,441,505 for the 8th Plaintiff.
- (i) Tzs. 199,806,117 for the 9th Plaintiff.
- (j) Tzs. 35,096,080 for the 10th Plaintiff.
- (k) Tzs. 104,968,914 for the 11th Plaintiff

(l) Tzs. 117,562,914 for the 12th Plaintiff.

(m) Tzs. 163,203,457 for the 13th Plaintiff.

(n) Tzs. 206,558,657 for the 14th Plaintiff.

(In total 2,436,658,312/=)

- (ii) An order for payment of a compound interest on the money prayed under prayer (i) hereinabove at the rate of 20% per annum from 10.5.2016 to the date when the respective money together with its interest due as of then shall be paid in full;
- (iii) General damages of Tzs 20,000,000 to each of the Plaintiffs;
- (iv) Aggravated damages at the rate to be determined by the Court.
- (v) Interest on the decretal sum at the rate of 7% per annum from the date of judgment to the date of full satisfaction;
- (vi) Costs of this case against both the defendants jointly or severally;
- (vii) Any other relief that to the Honourable Court appears just and proper to grant in favour of the Plaintiff's

On the 11<sup>th</sup> day of August, 2023, the defendants filed a Notice of Preliminary Objection on Point of Law that the suit is incompetent for being preferred against wrong parties to wit the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. On the 18<sup>th</sup> August, 2023 when the parties appeared before me, the matter was ordered to be disposed by way of written submissions. The Plaintiffs and the 3<sup>rd</sup> Defendant having complied to the scheduling order, this is a ruling on the objections raised. Mr. Charles Mtae, learned State Attorney filed the submissions on behalf of the defendants while Mr. Benard Mashauri, learned Advocate fended for the plaintiff.

Submitting on the objection, Mr. Mtae was of a strong view that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are wrong parties therefore incapable of being sued. His argument was that the 1<sup>st</sup> Defendant is the High Court of the United Republic of Tanzania (Land Division), a division of the High Court which among others, deals with land disputes. The Division is presided by the Judge who become ex officio upon deciding a matter to the finality. That once the matter is decided to the finality, whether on merit or on preliminary matters, the party aggrieved with such decision has a right to refer the matter to the Court of Appeal for redress in accordance to the law. He therefore emphasized that the duty of the Judge is dispensed with when a verdict is delivered. So, neither the High Court Land Division or any of the Judge presiding over the High Court Land Division can be sued for failure to execute any judgment and decree in given by itself in the course of dispensing justice.

With regards to the claims by the Plaintiffs, Mr. Mtae submitted in the submission that neither the High Court Land Division nor the Presiding Judge of the High Court Land Division can be accountable for failure to pay the money, as claimed by the Plaintiffs, or any proceed of any of the party in the matter decided by the same Court. Further that execution is a remedy for a party whom the final decision of the Court is not in his or her favour but in this court, there is no any judgment against the High Court Land Division or against the Judicial Service to warrant them to be sued in this matter.

Mr. Mtae went on submitting that the 2<sup>nd</sup> Defendant, who is the Judicial Service, is established under Section 4(1) of the Judiciary Administration Act, 2011 for among others, administration of the Judiciary. He went on submitting that the Judiciary or judicial system is

the system of courts that adjudicates legal disputes/disagreements and interprets, defends and applies the law in legal cases. He then argued that the general administration of the Judicial services is vested to the Chief Court Administrator who among others is responsible for the day-to-day administration of the Judiciary Service

Moreover, the Defendants submitted that the pleadings show that the plaintiff claim interest for late payment of their money that was deposited in the account operated by the Judiciary. Under these circumstances, the defendant Counsel's questioned the liability because the 1<sup>st</sup> Defendant as a mere forum for justice, in itself it doesn't collect and operate any bank account rather than hearing and determining land disputes as submitted above. He argued further that the 2<sup>nd</sup> Defendant can not be a proper party to be condemned to pay interest as the Judiciary Service is just a service as administration of day-to-day function including operation of bank accounts of the Judiciary which is done by the Chief Court Administrator as the law provides. Therefore, he concluded, for the interest of justice a proper party to comply with any order of the court in respect to the claims in the instant suit, assuming the same are given in favour of the plaintiffs, is the Chief Court Administrator hence the suit has to be brought against the Chief Court Administrator.

In supporting his submissions, Mr. Mtae made reference to the persuasive decision of this court in the case of **Dr. Hamza K. Khalifa Vs. Executive Secretary Tanzania Commission for Universities (TCU) and Another, Civil Appeal No. 148 of 2019** where the court emphasized on the importance of suing proper parties especially when it comes to execution. Furthermore, in arriving to its decision, the Court in the above case was also persuaded by numerous decisions including the

case of **Christina Mrimi Vs. Coca Cola Kwanza Bottles Ltd Civil Appeal No. 112 of 2008**, **Fortunatus Masha vs William Shija [1970] TLR 91** and **Attorney General vs. Rev. C. Mtikila, Civil Appeal No. 2 of 2007**. From guidance of the above cases the Defendant prays the Court decide in favour of the Defendants and from the above explanations, it is Mr. Mtae's argument that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are wrong parties as in their position and status cannot execute any decision of the court. The only remedy left to the instant suit is for the same to be struck out. Further that since the objection has been raised at the earliest stage hence the latter will not pray for costs.

In reply to the Defendant's submissions, Mr. Mashauri submitted that the pleadings show that the plaintiff claim interest for late payment of their money in the account operated by the Judiciary. That by reading Order I Rule 10 (2) of the Civil Procedure Code, Cap 33 R.E 2019 ("the CPC") it is obvious that the Defendants raised this matter as a preliminary objection and asked the court to strike out the matter because they had not gotten time to read the law. He argued if they read the law they would have seen that:

- (a) When the contention is that a person sued should not have been sued but another was the proper one to be sued, as in this case, a defendant does not raise that issue as a preliminary objection but as an application. So, even this objection is improperly before the court as it states of something which should have been brought by way of application, not by a preliminary objection like this.
- (b) When the contention is that a person sued should not have been sued but another was the proper one to be sued, as in this

case, a party raising the issue does not ask for an order to strike out the suit but for an order to strike out the name of the person wrongly sued and add the name of the one who should have been sued.

Mr. Mashauri then cited the provisions of Order I Rule 10 (2) which reads:

*"The court may, at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."*

Having cited the above provision, he also cited the case of the **Elikana Kulola v. Mkokwa Local Government & 2 Others, Land Case No. 08 of 2022 HC** at Sumbawanga (Unreported) which was decided very recently on 29/9/2023 by Mwenempanzi, J observed:

*"There is no dispute that the Plaintiff wrongly joined the Mkokwa Local Government as the 1<sup>st</sup> Defendant to this suit. However, the remedy for misjoinder is not to strike out the suit but to order the removal of the misjoined party by an amendment."*

He went on submitting that in the event the Court decided to hear the complaint of the Defendants despite not being brought by way of application, and agrees with the Defendants that there is a misjoinder, as

alleged, then the remedy is to order the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to be struck out and the name of the Chief Court Administrator to be added instead.

Mr. Mashauri submitted further that the contention by the Defendants that the Plaintiffs should not have sued the Judiciary Service but the Chief Court Administrator, 'as all administration day to day function including operation of banking accounts of the Judiciary is done by the Chief Court Administrator' he argued that the argument raised is certainly a result of the Defendants' failure to read s. Section 6 (3) the Government Proceedings Act, Cap 5 R.E 2019 ('the **GPA**), particularly its amendment vide Section 25 of the Written Laws (Miscellaneous Amendments) Act, No. 1 of 2020. He pointed out that the provision requires a suit against any department or institution within the government to be brought not against the head, leader or chief actor of that department or institution, but against the department or institution itself. That the requirement is to sue an institution: 'ministry, government department, local government authority, executive agency, public corporation, parastatal organization or public company,' not its head. In the present case, he submitted, the institution is called the "**Judiciary Service**" and the Chief Court Administrator is its head. Further that Sections 4 and 7 Judiciary Administration Act, 2011, Act No. 4 of 2011 provide:

*"4 (1) There shall be, for the purpose of Administration of the Judiciary, a Service to be known as the Judiciary Service."*

*"7 (1) There shall be a Chief Court Administrator which shall .. be appointed by the President..."*



*(4) The Chief Court Administrator shall be the head of the general administration of the Service and shall be responsible to the Commission.*

*3. In this Act..., 'the Service' means the Judiciary Service established under this Act.'*

Mr. Mashauri submitted that the defendants having invited the Court to fault the Plaintiffs for having sued an institution rather than suing its chief executive officer, the Defendants are in effect urging the court to fault the plaintiffs under what **Section 6 (3)** requires to be followed and hence to act in contravention with the law. That invitation, he argued, should not be accepted as it goes contrary to its constitutional mandate since it is only the Attorney General who is sued by his title.

From the above, he concluded that a reading of the pleadings and the law above clearly shows that this case called for the suing of the High Court (Land Division), which is under the Judge in Charge which is the one specifically stated to be receiving money paid under decrees like the present money under Order XXI Rule 1 (1) (a) of the CPC

While he agreed that suing a wrong party is more or less challenging when it comes to execution, he argued that the said principle should not be rightly invoked in the matter at hand. That even if the Chief Court Administrator is sued as the Defendants want to do, instead of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant, execution therefore shall not be made as they always do in execution of decrees against individuals. His argument was further that the process is a bit different when it comes to execution of decrees against the government. Execution in this matter regardless of who shall be sued is uniform in terms of **section 16 (1) and (2) of the GPA** which requires that if it is for payment of money in execution, there must be certificate

to be issued for that purpose which shall be paid by the Government treasury or by other Government accounting officer.

Mr. Mashauri concluded by a prayer that from all that is submitted above, the Defendants' objection be overruled with costs. Alternatively, should this Court find that it is the Chief Court Administrator to be sued, he prayed that the court invoke the provision of Order I rule 10(2) read together with Section 3A and 3B of the CPC to remove the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant and add the name of the Chief Court Administrator.

I have gone through the objections raised, the submissions of the parties and pleadings filed by parties. Before me is tabled an issue on whether the 1<sup>st</sup> and 2<sup>nd</sup> defendants are the proper parties to be sued. The defendant's argument is that the 1<sup>st</sup> Defendant is the High Court of the United Republic of Tanzania (Land Division), a division of the High Court which among others, deals with land disputes. The Division is presided by the Judge who become ex officio upon deciding a matter to the finality. As for the second defendant, Mr. Mtae argued that the 2<sup>nd</sup> Defendant can not be a proper party to be condemned to pay interest as the Judiciary Service is just an administrator of day-to-day function including operation of bank accounts of the Judiciary which is done by the Chief Court Administrator as the law provides. As per the records, the Plaintiffs are suing the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for interests of money that was awarded to them by a garnishee order where the said amount of money awarded was deposited to the Courts account to be paid to the Plaintiffs. There occurred a delay of the Court in Executing the order and that is what has made the Plaintiffs sue the 1<sup>st</sup> and 2<sup>nd</sup> Defendant. The first question I asked myself is as to how the 1<sup>st</sup> defendant came into fault and be sued. As argued by Mr. Mtae, the 1<sup>st</sup> defendant is court established by the Land

Disputes Courts Act, Cap. 216 R.E 2019 to determine land disputes. The function of the court ends by issuing a decision before it. It is not involved in administration of bank accounts or payment of any money to a party. Afterall, a division of the High Court cannot be sued just like any other legal or natural person.

As for the 2<sup>nd</sup> defendant, I have gone through Part II of the Judiciary Administration Act No. 4 of 2021 whereby, **Section 4 (1), (2) and (3)** of the said Act establishes the Judiciary Service. The Section 2011, provides for establishment, composition and what the Service cannot do; the provision does not in any way vest the Service with powers to involve or engage its self with the Judiciary Account or any activities of finances. Neither did it give the authority to sue or be sued in its own. Thus, provision of law strictly reveals that the 2<sup>nd</sup> Defendant is not a proper party to be sued by the plaintiffs in respect to their claims.

That being my observation, I find the objection to have merits and it is hereby sustained. The 1<sup>st</sup> and 2<sup>nd</sup> defendants are not the proper parties to be sued in this case. As for the consequential remedy to the discrepancy, Mr. Mashauri urged the court, in the case that the objection is sustained, to order for amendment of pleadings and order proper parties to be sued. On my part, having found that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are not the proper parties to be sued, then the 3<sup>rd</sup> defendant, who is sued as a necessary party under Section 6 of the Government Proceedings Act, Cap. 5 R.E 2019 cannot remain a party in the suit because there is no cause of action against him.

From all that I have stated above, I join hands with the 3<sup>rd</sup> Defendant that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants sued herein are not the proper parties to be sued. Consequently, the suit is hereby struck out. Given the

nature of what has brought to this point and the nature of the claim, I make no order as to costs.

**Dated at Dar es Salaam this 6<sup>th</sup> day of December, 2023.**

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a dotted line.

**S. M. MAGHIMBI**

**JUDGE**