

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 242 OF 2016

JUMA MARUMBO AND 42 OTHERS APPLICANTS

VERSUS

- 1. REGIONAL COMMISSIONER,
DAR ES SALAAM REGION**
- 2. DISTRICT EXECUTIVE DIRECTOR,
ILALA MUNICIPAL COUNCIL**
- 3. THE ATTORNEY GENERAL**

..... RESPONDENTS

**(Application for extension of time to apply for stay of execution from the
decision of the High Court of Tanzania, at Dar es Salaam)**

(Muruke, J.)

**Dated 22nd day of February, 2016
in
Land Case No. 151 of 2012**

RULING

18th October & 8th November, 2016

MWARIJA, J.A.:

In this application, the applicants, Juma Marumbo “and 42 Others” are seeking extension of time to file an application for stay of execution of the decree of the High Court (Land Division), at Dar es Salaam (Muruke, J.) dated 22nd day of February, 2016 in Land Case No. 151 of 2012. The application which has been brought by a notice of motion filed on 12th

August, 2016 is made under Rule 10 of the Court of Appeal Rules, 2009. It is supported by an affidavit sworn by Mr. Leonard Manyama, advocate.

The respondents, the Regional Commissioner, Dar es Salaam region, the District Executive Director, Ilala Municipal Council and the Attorney General resisted the application. Apart from the affidavit in reply sworn by Mr. Vincent Tangoh, learned Principal State Attorney, the respondents have raised a preliminary objection challenging the competence of the application. The point of objection is to the effect that:-

"The present application is untenable in law for want of leave to refile after withdrawal of Civil Application No. 117 of 2016."

At the hearing of the application on 18/10/2016, the applicants were represented by Mr. Leonard Manyama, learned counsel while Mr. Vincent Tangoh, learned Principal State Attorney represented the respondents. As stated above, the respondents have raised a preliminary objection. Before the learned counsel for the parties could argue the objection however, the Court wanted to satisfy itself as whether or not all the applicants have been disclosed in the application. The Court was prompted to raise the

issue because of the manner in which the applicants have been cited in the notice of motion.

Submitting on the issue Mr. Manyama argued that all the applicants have been disclosed because, as shown in the notice of motion, there are a total of 43 of them, hence the citation **Juma Marumbo and 42 Others**. He contended that the names of the applicants have been disclosed in Annexure "F" (the Annexure) to his supporting affidavit. He added that although the Annexure consists of 65 names, only those who have inserted their signatures are the persons who have preferred the application. When the attention of the learned counsel was drawn to the fact that the Annexure shows that 44 persons have signed it, he tried to explain the variance by contending that, when signing the document, one of the persons, Amina Msikiti, mistakenly extended her signature such that it covered the name of another person, Farid O. Juma who did not, according to the learned counsel, sign the list.

On his part, Mr. Tangoh submitted in reply that since, according to the Annexure, there are 65 names, the position is that the applicants who have been referred to as "42 others" are not disclosed. He discounted the contention that the 42 applicants are those who have signed the Annexure

arguing that the contention is not supported by the contents of the affidavit. He added that the list itself is not complete because in the High Court, the number of the plaintiffs was 103. With regard to Mr. Manyama's submission that the number of the persons who have signed the Annexure are 42 and not 43, Mr. Tangoh argued that the submission raises matters of evidence which an advocate is precluded from raising them from the bar.

On that reply and by relying on the case of **Ghati Methusela v. Matiko w/o Marwa Mariba**, Civil Application No. 6 of 2006 (CA- MZA) (unreported), the learned Principal State Attorney prayed to the Court to strike out the application for being incompetent.

In rejoinder, Mr. Manyama reiterated his argument that the names of all the applicants have been disclosed in the Annexure. He argued further that although in the suit which gave rise to the decree sought to be stayed, there were 103 plaintiffs, the said applicants are the only parties who have decided to file the application.

From the submissions made by the learned counsel for the parties, it is not disputed that the notice of motion does not disclose who the "42 other" applicants are. It is under paragraph 11 of the supporting affidavit

that an attempt is made to disclose them. According to that paragraph, the names are contained in the Annexure.

As stated above, the Annexure consists of 65 names. It is obviously difficult therefore to identify who among them are the "42 other" applicants. The submission by Mr. manyama that the applicants are those persons who have signed the Annexure and that, one of the signatures was extended to another person's name thus indicating that 43 persons signed the document is, with respect, clearly untenable. As argued by Mr. Tangoh, the contention is not supported by the contents of the affidavit. Paragraph 11 thereof which has been relied upon by the learned counsel for applicants reads as follows:-

"That the list of the applicants applying for extension of time to file an application for stay of execution is attached and marked Annexure "F".

Neither the above quoted paragraph of the affidavit nor any other part thereof is in support of the contentions made by the learned counsel for the applicants. Indeed, as submitted by Mr. Tangoh, the learned counsel had attempted to raise new matters of evidence which are different from the contents of the affidavit filed in support of the application. There is no

gain saying therefore that as the application stands, apart from Juma Marumbo, the other applicants have not been disclosed out of the 65 persons listed in the Annexure. It is therefore not certain who the other 42 applicants are.

The effect of an omission to disclose all applicants in an application is to render it incompetent – See the case of **Othiniel Ahia and 52 Others v. L. M. Investments Limited**, Civil Application No. 2 of 2015. In that case, the applicants were cited as **Othiniel Ahia and 52 Others**. Those other 52 applicants were not, however, disclosed. In its decision, the Court found the omission fatal having the effect of rendering the application incompetent. It relied on its previous decision in the case of **Bernard Masaga, Merchant K. Ikungura and Others v. National Agricultural and Food Corporation and 2 Others**, Civil Application No. 177 of 2006 in which, like in the **Othiniel Ahia case** (*supra*), the names of the other applicants were not disclosed. In answering the issue whether or not the omission rendered the application incompetent, the Court held as follows:-

*"As it is, no information was forthcoming to show who those **others** are, and whether there was leave granted to Ikungura to represent them. In*


*the light of the failure to disclose who those **others** are, it will be fair to say that, strictly speaking, there is no proper application before the Court in terms of Rule 46 (1) [now Rule 48 (1)] of the Rules.”*

Having found above that the omission to disclose the 42 other applicants renders the application incompetent, the answer suffices to dispose of the matter and thus the need for considering the preliminary objection raised by the respondents does not arise. In the event, the application is hereby struck out. Since the point which has disposed of the matter was raised by the Court ***suo motu***, each party shall bear its own costs.

DATED at DAR ES SALAAM this 31st day of October, 2016.

A.G. MWARIJA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL