

**IN THE COURT OF APPEAL OF TANZANIA,
AT MWANZA**

(CORAM: MUSSA, J.A., MZIRAY, J.A. And NDIKA, J.A.)

CIVIL APPLICATION NO. 27/08 OF 2015

NUMAISH STEPHEN FORTES APPLICANT

VERSUS

JOHN NWALA SAMANGU FIRST RESPONDENT

BUZURUGA SAFARI LIMITED SECOND RESPONDENT

HEZRON LAZARO LUPEMBA THIRD RESPONDENT

**(Application for Extension of Time to apply for revision of the decision of the
High Court of Tanzania at Mwanza)**

(Makaramba, J.)

dated the 29th day of April, 2015

in

Misc. Civil Revision No. 07 of 2015

RULING OF THE COURT

24th & 25th May 2017

NDIKA, J.A.:

By notice of motion made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 ("the Rules"), the applicant named above prays against the respondents for an order extending time within which to lodge an application for revision of the decision of the High Court of Tanzania at

Mwanza (Makaramba, J.) dated 29th April, 2015 in Miscellaneous Civil Revision No. 07 of 2015.

When the application came up for hearing before a single Justice (Massati, J.A.) on 25th October 2016, in the presence of Mr. Faustin Malongo, learned Counsel for the applicant, and Mr. Mathew Nkanda, learned Advocate for the first respondent, Mr. Salum Magongo, learned Counsel, notified the Court that he had been served with all documents pertaining to a corporate person known as "Buzuruga Safari Limited" named herein as the second respondent. However, according to him, this person was not the one he represented before the Resident Magistrate's Court of Mwanza (the trial court) in Civil Case No. 42 of 2000 whose name was "Buzuruga Service Station." Accordingly, Mr. Magongo respectfully declined to represent a person who had not instructed him, although he went further to suggest that there could possibly be a confusion in the names. In their respective responses, Mr. Malongo and Mr. Nkanda concurred with Mr. Magongo and urged that the name mix-up be resolved first as a preliminary issue.

Upon the concurrence of the opinions of the parties, the single Justice adjourned the matter in accordance with Rule 60 (1) of the

Tanzania Court of Appeal Rules, 2009 (“the Rules”) for the determination by the full Court. He was attentive that he had no jurisdiction as a single Justice to examine and correct apparent errors in the lower courts’ records.

When the matter came before us for hearing, Mr. Malongo, learned Counsel, appeared for the applicant while Mr. Nkanda, learned Advocate, represented the first respondent and held Mr. Magongo’s brief for the “second respondent.” As the third respondent entered no appearance even though he had notice of the hearing, we proceeded in his absence in terms of Rule 63 (2) of the Rules and asked the parties to address us on the name discrepancy, particularly its effect on the previous and the ongoing proceedings.

Mr. Malongo recalled that while the original proceedings before the trial court (Civil Case No. 42 of 2000) involved “Buzuruga Service Limited” as the plaintiff/decreed-holder and “Cheetah Safaris Limited” as the defendant/judgment-debtor, the subsequent execution proceedings before the trial court in Miscellaneous Application No. 38 of 2008 from which the revisional proceedings before the High Court in Miscellaneous Civil Revision No. 07 of 2015 arose were clearly vitiated because the

plaintiff/decreed-holder named as one of the respondents was named as "Buzuruga Safari Limited" instead of "Buzuruga Service Limited." It was his view that the said "Buzuruga Safari Limited" was a third party or perhaps, a non-existent entity that ought to have not been impleaded as a party to the proceedings alluded to earlier. The said proceedings also suffered a further ailment that they omitted "Buzuruga Service Limited" who was a party in the originating proceedings. Given the circumstances, Mr. Malongo urged us to invoke the Court's revisional powers and nullify the objection proceedings as well as the revisional proceedings. In this regard, he cited our decision in **Christina Mrimi v Coca-Cola Kwanza Bottles Ltd**, Civil Appeal No. 112 of 2008 (unreported). In that appeal, the Court held that the registered name of the respondent, which was actually a corporate body, was fundamental and that the appeal, having been lodged against a wrongly named respondent, was incompetent.

Finally, Mr. Malongo submitted that should the Court agree and proceed to nullify the proceedings as proposed, the present application would be rendered nugatory and strikable.

Mr. Nkanda fully concurred with his learned friend's submissions.

On our part, having examined the relevant records of the trial Court and the High Court we find no cause to differ with the submissions of the parties on the existence of the name mix up in the execution proceedings and the revisional proceedings as well as its attendant vitiating effect to the aforesaid proceedings. We agree with Mr. Malongo that in **Christina Mrimi v Cocacola Kwanza Bottles Limited** (supra), we held that that the names and identities of the parties were so fundamental. We took the same stance in **Jaluma General Supplies Limited v Stanbic Bank (T) Limited**, Civil Appeal No. 34 of 2010 (unreported). In both decisions, the Court struck out the appeals on account of a defect in the description of one of the parties.

Given the above findings and position of the law, we are enjoined to invoke our revisional powers under Rules 4 (3) of the Appellate Jurisdiction Act, Cap. 141 RE 2002 to nullify the trial court's proceedings in Miscellaneous Application No. 38 of 2008 as well as the subsequent revisional proceedings before the High Court in Miscellaneous Civil Revision No. 07 of 2015 for being instituted and conducted against a wrongly named second respondent coupled with the omission of Buzuruga Service Limited that was one of the necessary parties. As the present

application arose from the decision of the High Court whose proceedings we have nullified as already stated, it ceases to exist and, accordingly, we strike it out. Each party to bear its own costs.

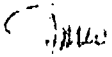
DATED at MWANZA this 24th day of May 2017.

K.M. MUSSA
JUSTICE OF APPEAL

R.E.S. MZIRAY
JUSTICE OF APPEAL

G.A.M. NDIKA
JUSTICE OF APPEAL

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


P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL