

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 210/01 "B" OF 2019

1. GEORGIO ANAGNASTOU  
2. OURANIA ANAGNASTOU } ..... APPLICANTS

VERSUS

1. THE HON. ATTORNEY GENERAL  
2. EMMANUEL MARANGAKIS (As an  
Attorney of Anastasios Anagnostous) } ..... RESPONDENTS

3. ADMINISTRATOR GENERAL

(Application from the decision of the High Court of Tanzania at Dar es  
Salaam)  
(Twaib, J.)

dated the 10<sup>th</sup> day of May, 2011

in

Civil Case No. 1 of 2011

.....

**RULING**

19<sup>th</sup> July & 7<sup>th</sup>, 2019

**NDIKA, J.A.:**

By a notice of motion made under Rule 4 (1) and (2) of the Tanzania Court of Appeal Rules, 2009 ("the Rules"), the applicants seek an order of the Court in the following terms:

*"That, this Honourable Court be pleased to add/join interveners/applicants as new respondents in the proceedings in Civil Application No. 138 of 2019 which is pending before this Honourable Court."*

To appreciate the context in which this matter arises, it is necessary to preface this ruling with the essential facts of the case as can be gleaned from the founding affidavit sworn by Mr. Emmanuel Safari, an advocate acting for the applicants.

The applicants herein claim to be the beneficiaries of the estate of the late Diana Artemis Ranger who died intestate on 6<sup>th</sup> May, 2006. Apart from them, the deceased was survived by her brother, Anastasiosis Anagnostou, on whose behalf the second respondent was acting upon a power of attorney. Initially, the deceased's estate was administered by Georgio Anagnostou, the deceased's nephew, but his appointment was subsequently revoked on 9<sup>th</sup> October, 2009 by this Court in Civil Appeal No. 51 of 2007. In his place the third respondent was appointed.

Sometime in 2011, the first respondent, acting as an attorney of the said Anastasiosis Anagnostou, filed a special case against the third respondent by way of a plaint before the High Court of Tanzania at Dar es Salaam (Civil Case No. 1 of 2011) seeking a determination whether the said Anastasiosis Anagnostou, a foreigner, could inherit the deceased's landed property in Tanzania. The High Court (Twaib, J.) answered that question in the affirmative, that is, a foreigner could inherit land in Tanzania, and went a step further by ordering the third respondent to

bequeath the disputed property – Plot No. 648, Upanga, Dar es Salaam – to the said Anastasios Anagnostou or his duly appointed attorney.

The first respondent is aggrieved by the aforesaid decision and not being a party to that case he could obviously not appeal to this Court against that decision. In the circumstances, he lodged Civil Application No. 138 of 2019 (to be referred to as "the pending application") in this Court against the second and third respondents seeking extension of time to apply for revision of that decision. The said pending application was due to be heard on 3<sup>rd</sup> June, 2019 but it was then adjourned to 10<sup>th</sup> June, 2019 before it was finally adjourned to a date to be fixed by the Registrar.

As intimated earlier, the applicants herein seek to be joined as respondents in the pending application on the basis of their standing as beneficiaries of the deceased's estate as they are wary that their interests are unprotected. I find it instructive, at this point, to let the founding affidavit speak for itself:

*"17. That, the interveners/applicants are heirs and beneficiaries of the estate of the late Diana Ranger and since the demise of their aunt they have been parties to all proceedings subsequent thereto for the protection of their interests in the deceased's estate.*

*18. That, the interveners/applicants being the deceased's near relatives, heirs and beneficiaries of the estate of the late Diana Artemis Ranger nee Anagnostou Georgio have superior interest over the house in dispute than the respondents who are strangers to the estate of the late Diana Ranger.*

*19. That, further to the above, it is averred that, if the interveners/applicants are not joined in this application as respondents, the interveners/applicants are going to suffer irreparably and the applicant (sic) and the respondents will suffer nothing for being mere stranger to the estate of the late Diana Ranger."*

It is of note that none of the respondents filed any affidavit in reply to the applicants' quest for extension of time. I must hasten to observe, therefore, that the absence of any such affidavit in reply means that averments in the supporting affidavit are uncontroverted.

At the hearing of the application, Mr. Emmanuel Safari, learned advocate, relying on the contents of the notice of motion and the founding affidavit, urged me to grant the application. He confirmed that the applicants seek to join the proceedings in Civil Application No. 138 of 2019 in this Court, not the High Court as suggested by an apparent error in Paragraph 1 of the supporting affidavit.

Replying, Ms. Grace Lupondo, learned State Attorney representing the first respondent, opposed the application. She, at first, assailed Paragraph 14 of the supporting affidavit, contending that it contained a palpable lie rendering the whole of the affidavit unreliable. She also took issue with the applicants' timing in seeking relief in the instant application, saying that the present quest is belated considering that the application intended to be joined is at an advanced stage towards disposal, the parties having duly lodged their respective written submissions. She thus beseeched me to strike out the matter on account of the defect in the supporting affidavit.

Both the second respondent, who appeared in person, and Mr. Samuel Cosmas Mutabazi, learned State Attorney representing the third respondent, had no qualms with the application being granted as presented.

Rejoining, Mr. Safari denied that the supporting affidavit contained a lie. He submitted that it was not open to the first respondent to challenge the veracity of the depositions in the affidavit having not lodged any affidavit in reply. He added that the assailed averment was plainly unblemished.

To begin with, I think I should deal with Ms. Lupondo's attack of the supporting affidavit, albeit very briefly. In my opinion, the learned State Attorney's contention that the said affidavit was fatally defective was, in effect, a preliminary point of objection which ought to have been raised to the Court's attention upon furnishing a three clear days' notice as required by Rule 107 (1) of the Rules as amended by the Tanzania Court of Appeal (Amendment) Rules, 2017, G.N. No. 362 of 2017. The said provision makes it mandatory that:

*"A respondent intending to rely upon a preliminary objection to the hearing of the appeal or application shall give the appellant or applicant three clear days' notice thereof before hearing, setting out the grounds of objection such as the specific law, principle or decision relied upon, and shall file five such copies of the notice with the Registrar within the same time and copies of the law or decision, as the case may be, shall be attached to the notice."*

It is apparent that a notice of the intended preliminary objection seeks to give the opposite party notification of the nature and scope of the grounds of objection to allow for sufficient preparation in advance of hearing to avoid such party being taken by surprise. That is part of the overarching object of ensuring that the judicial process is fair, just and

even-handed – see **M/S Majembe Auction Mart v. Charles Kaberuka**, Civil Appeal No. 110 of 2005 (unreported). In the circumstances of this matter, the learned State Attorney's contention deserves no consideration for flouting the requirement under Rule 107 (1).

The foregoing apart, I agree with Mr. Safari that it was not open to the learned State Attorney to seek from the Bar to controvert or challenge the veracity of the depositions in the founding affidavit having lodged no affidavit in reply.

Adverting to the merits of the application, it is not disputed that the applicants are beneficiaries of the deceased's estate. They have been parties to several proceedings over the deceased's estate so as to protect their interests. It is notable that in Civil Case No. 225 of 2013 before the High Court, Dar es Salaam District Registry, they successfully sued the first and third respondents along with the Commissioner for Lands and a certain Mr. Joseph Anthony Gonsalves for nullification of sale and transfer of the disputed property by the first respondent to the said Mr. Gonsalves. In the premises, they have established sufficient interest and standing to join the pending application as respondents so as to protect their interests.


Ms. Lupondo was concerned that the present motion came rather too late when the pending application had by then reached an advanced stage towards hearing and disposal. That may be so but it is not a decisive consideration. In my view, giving the applicants an opportunity to present their case on the matter is the most significant consideration; for, the right to be heard is so fundamental that it may not be overridden by any other consideration.

In the upshot, I find merit in the application, which I grant. Accordingly, it is ordered that the applicants be and are hereby joined as respondents/interveners in Civil Application No. 138 of 2019. Costs shall be in the cause.

**DATED** at **DAR ES SALAAM** this 26<sup>th</sup> day of July, 2019.

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

The ruling delivered this 7<sup>th</sup> day of August, 2019 in the presence of Mr. Othman Omary counsel for the Respondent and in the presence of the applicant in person, is hereby certified as a true copy of the original.

  
E. Y. MKWIZU  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**