

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

**CIVIL APPLICATION NO. 182 OF 2016**

**QUALITY GROUP LIMITED ..... APPLICANT**

**VERSUS**

**TANZANIA BUILDING AGENCY ..... RESPONDENT**

**(Application for Extension of time to file Revision from the Judgment  
and Decree of the High Court of Tanzania at Dar es Salaam)**

**(Mgeta, J.)**

**dated the 22<sup>nd</sup> day of October, 2014**

**in**

**Civil Case No. 221 of 2014**

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**RULING**

20<sup>th</sup> November, 2020 & 4<sup>th</sup> March, 2021

**KITUSI, J.A.:**

I proceeded with the hearing of this application although the applicant did not enter appearance. Service on Mr. Kamara, learned advocate of Crest Attorneys was effected but he is recorded to have told the process server that he was no longer acting for the applicant. Taking note that Mr. Kamara is the advocate on record and considering that he had also filed written submissions, I proceeded to treat the applicant's case

as having been argued in terms of Rule 106 (12) of the Tanzania Court of Appeal Rules, 2009 as amended (The Rules).

The respondent was represented by Ms. Grace Lupondo and Ms. Angelina Ruhumbika, learned State Attorneys. They had earlier raised one point of preliminary objection by a Notice dated 4<sup>th</sup> June, 2020. Ms. Lupondo sought to address that point first and I granted her leave.

According to Ms. Lupondo who argued the matter, this application for extension of time has previously been heard and conclusively determined by this Court in Civil Application No. 102 of 2012. She submitted that in that application the parties were the same as in the present application and the issue was the same. She went on to argue that although in Civil Application No. 102 of 2015 Luanda, JA struck it out, the truth of the matter is that the application was determined on merit, and ought to have been dismissed. The learned Attorney relied on the case of **Ngoni – Matengo Cooperative Marketing Union Ltd v. Ali Mohamed Osman** [1959] E.A 577. She stressed the point that it is the substance of the matter that ought to differentiate between a matter that has been

determined on merit and the one that has not. She submitted that the wording used whether the matter is dismissed or struck out is not relevant.

Ms. Lupondo further made arguments in relation to the principle of res judicate and submitted that it applies to applications in the same measure it does to suits. She cited the case of **Ester Ignas Luambano v. Adriano Gedam Kipalile**, Civil Appeal No. 91 of 2014 (unreported), to drive the point home.

The fact that Civil Application No. 102 of 2015 was struck out is acknowledged by the applicant in the Notice of Motion and supporting affidavit specifically paragraph 14. In the affidavit it is clear that the application was struck out because copies of Chamber summons and affidavit were not annexed to support averments made in paragraph 3 of the affidavit.

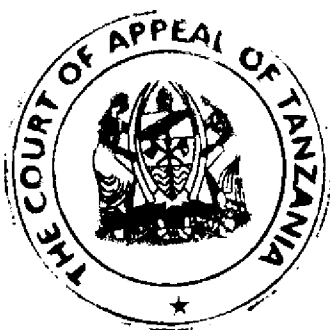
To me, the fact that the application was held to have lacked proof of the averments in the supporting affidavit only means that it was conclusively determined on the merit. I agree with Ms. Lupondo that I am barred from sitting on the same application between the same parties. Seeking inspiration from the principle of res judicate and certainly for the

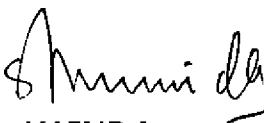
reason that the same parties were heard on the same application in Civil Application No. 102 of 2015 I dismiss this application with costs.

**DATED at DAR ES SALAAM this 2<sup>nd</sup> day of March, 2021**

I. P. KITUSI  
**JUSTICE OF APPEAL**

The ruling delivered this 4<sup>th</sup> day of March, 2021 in the presence of Ms. Grace Lupondo, learned State Attorney for the respondent who is also holding brief for Mr. Shelizaba Walli, learned Counsel for the Applicant is hereby certified as a true copy of the Original.



  
S. J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**