

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
CIVIL APPLICATION NO. 116/01 OF 2021**

SALIM AMOUR DIWANI.....APPLICANT

VERSUS

**THE VICE CHANCELLOR NELSON
MANDELA AFRICAN INSTITUTION
OF SCIENCE AND TECHNOLOGY1ST RESPONDENT**

THE ATTORNEY GENERAL2ND RESPONDENT

**(Application for extension of time to file revision from the decision of the
High Court of Tanzania at Dar es Salaam)**

(Mlacha, J.)

dated the 8th day of October, 2020

in

Misc. Civil Application No. 50 OF 2019

.....

RULING

13th & 21st February, 2023

KIHWELO, J.A.:

In this application, Mr. Salim Amour Diwani, the applicant, is seeking an order for extension of time within which to lodge an application for revision from the decision of the High Court of Tanzania at Dar es Salaam (Mlacha, J.) dated 08.10.2020 in Misc. Civil Application No. 50 of 2019. The notice of motion is made under rule 10 of the Tanzania Court of Appeal

Rules, 2009 (the Rules). It is supported by an affidavit sworn by Crescencia B. Rwechungura, learned counsel for the applicant.

The applicant has raised three main grounds as basis of the application, however, for reasons to be apparent shortly, I will not reproduce them here but essentially, the applicant is challenging the legality of the High Court decision (Mlacha, J.) which stated that the High Court was *functus officio* to review its decision in Misc. Civil Application No. 28 of 2019.

When the application came for hearing on 13.02.2023, the applicant was represented by Ms. Crescencia B. Rwechungura, learned advocate. On the adversary side, the respondents were represented by Mr. Edwin Joshua Webiro assisted by Ms. Careen Masonda, both learned State Attorneys.

Before hearing of the application could commence in earnest, Mr. Webiro, drew the attention of the Court to the fact that the second respondent who has been made a party in this application was not a part in the proceedings below, and therefore, he sought for the directives of the Court in that respect. It was on that account, I intimated to the parties to address me on the propriety or otherwise of joining the second respondent in this application before arguing the substantive application.

At the very outset, Mr. Webiro, was very brief and focused, he contended that, it was inappropriate to join the second respondent who has never been a part in the original proceedings below and bearing in mind that the applicant has never applied and obtained leave to join the second respondent as a part in this application or the proceedings below. He went on to argue that, he was aware that, according to Order 1 rule 9 of the Civil Procedure Code, [Cap 33 R.E. 2019] (CPC), a suit or application cannot be defeated merely for non-joinder or misjoinder of parties but the CPC does not apply before this Court and that, it would have been easy to invoke Order 1 rule 9 before the High Court which exercised original jurisdiction but not at this stage. Mr. Webiro, paid homage to our earlier decision in **Halfani Sudi v. Abieza Chichili** [1998] T.L.R. 527 and argued that, since the second respondent was not a part at the previous proceedings, he implored upon us to find that the application before us is incompetent and therefore strike it out with costs. On being prompted whether it is possible to join the second respondent at this juncture, the learned State Attorney gallantly refuted that, it is not possible to join a part at this stage of the application.

On the adversary, Ms. Rwechungura, learned counsel for the applicant prefaced her submission by contending that since the Attorney General can be joined at any stage of the proceedings, then it was not improper to join

the second respondent in this application and went on to argue that, in any case no injustice will occasion to the respondent owing to the joining of the second respondent in the application.

Arguing further in response to the objection, Ms. Rwechungura, contended that, the learned State Attorney did not cite any provision of the law to that effect and therefore, implored upon us to ignore the objection and hence dismiss it.

In rejoinder submission Mr. Webiro reiterated his earlier submission and argued that Ms. Rwechungura did not cite any authority to support the contention that a necessary party may be joined at any stage of the proceedings as that may create chaos to the administration of justice and insistently argued that the application is incompetent.

I have dispassionately considered the submission by the learned trained minds for the appellant and the respondents in response to what I requested them to address the Court.

I wish to state at the outset that, court records are considered authentic and should not be easily altered as parties would wish to. It bears reaffirming that, parties in the proceedings should at any given time appear as they did in the previous proceedings unless there is a reason for not

observing that and only with the leave of the court. There is, in this regard, a considerable body of case law, See, for instance **Hellena Adam Elisha@ Hellen Silas Masui v. Yahaya Shabani & Another**, Civil Application No. 118/01/2019 (unreported) in which the issue was that the names which were appearing in the notice of appeal were different from those appearing in the application to strike out the notice of appeal. We underscored the significance of the authenticity and accuracy of court records which in our considered opinion includes a citation of parties' names as they appear in the proceedings.

Corresponding observations, were made in the case of **Isaack Wilfred Kasanga v. Standard Chartered Bank Tanzania Limited**, Civil Application No. 453/01 of 2019 (unreported) in which the Court was faced with an akin situation, and we observed that, parties in the proceedings should at any given time appear as they did in the previous proceedings unless there is a reason for not observing that.

Clearly, my reading of the record, it is quite obvious that parties in Miscellaneous Application No. 28 of 2019 before Ngwala, J. were not the same as in Miscellaneous Application No. 50 of 2019 before Mlacha, J. and so is the instant application where parties are not the same as the second

respondent has been joined for the first time and without prior leave of the court below or this Court, and this is contrary to what we have always emphasized that, parties in the proceedings should at any given time appear as they did in the previous proceedings unless there is a reason for not observing that.

In the result, I find and hold that, the application before me is incompetent. Given the circumstances that led to this outcome, I make no order as to costs.

DATED at DAR ES SALAAM this 20th day of February, 2023.

P. F. KIHWELO
JUSTICE OF APPEAL

The ruling delivered this 21th day of February, 2023 in the presence of Ms. Crescensia Rwechungura, learned counsel for the Applicant and Mr. Mathew Fuko, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL