

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWARIJA, J.A., MAIGE, J.A. And KHAMIS, J.A.)

CIVIL APPLICATION NO. 713/01 OF 2022

THE BOARD OF TRUSTEES OF THE PUBLIC

SOCIAL SECURITY FUND (PSSSF)

(as SUCCESSOR OF THE PARASTATAL PENSION FUND) APPLICANT

VERSUS

WILLIAM MWAKITALU & 29 OTHERS RESPONDENT

(Application for leave to change name of the applicant in the intended application to apply for extension of time to apply for review against the decision of the Court of Appeal)

(Lila, Mwangesi And Sahel, JJA.)

dated the 22nd day of May, 2020

in

Civil Appeal No. 185 of 2017

.....

RULING OF THE COURT

6th & 15th May, 2024.

MAIGE, J.A.:

The application at hand is for leave to change the name of the applicant in the intended application for extension of time within which to apply for review against the decision of the Court in Civil Appeal No. 185 of 2017. In accordance with the affidavit in support of the motion, until on the date of the pronouncement of the judgment of the Court, the applicant's name was "the Parastatal Pension Fund" herein after referred to as "the predecessor in title". Subsequent to the judgment, however,

the predecessor in title phased out of existence, by operation of the law, and its duties, assets and liabilities were succeeded by “the Board of Trustees of the Public Service Social Security Fund”, the applicant herein.

The decision of the Court aggrieved the applicant. As she was already time barred, she applied for extension of time to apply for review. However, instead of indicating that she was pursuing the matter as a successor of the judgment debtor, the applicant instituted the application in her own capacity. It did, therefore, not come as a surprise when the counsel for the respondent raised a preliminary objection doubting the *locus standi* of the applicant to commence the application. The applicant conceded to the preliminary objection, and as a result, the application was struck out.

Perhaps with a view to clear the issue of *locus standi*, the applicant has filed the instant application seeking leave to apply for extension of time to file the intended review in her name. The application is premised on rule 130 of the Tanzania Court of Appeal Rules, 2009 (the Rules).

At the hearing, the applicant had enjoyed the services of Messrs. Stanley Kalokola and Bryson Ngulo, both learned State Attorneys while the 1st respondent appeared as the representative of all the respondents.

In support of the application, Mr. Ngulo having adopted the notice of motion and the affidavit, submitted that since it is the law that, institution of a proceeding in the name of a person not in the decision sought to be challenged is not automatic, the application at hand is appropriate and has merit because, in the absence of such leave, the applicant will have no standing to commence the intended application. To cement his view, the counsel cited our decisions in **CRDB Bank PLC (Formerly CRDB (1996) LTD) v. George Kilindu** (Civil Application No. 110 of 2017) [2020] TZCA 361 (23rd July, 2020) and **TPB Bank PLC (Successor in Title to Tanzania Postal Bank) v. Rehema Alatunyamadza and Two Others** (Civil Appeal No. 155 of 2017) [2021] TZCA 46 (1st March, 2021). The first respondent on his behalf and on behalf of other respondents did not have any objection to the application.

When we asked Mr. Ngulo to address us whether in the absence of any pending proceedings in the Court, we can grant leave to change name of the intended applicant for review, he contended that since the right of the applicant to commence proceeding in respect of a decision which was in the name of the predecessor is not automatic, and, there being no provision in the rule covering the scenario, this Court enjoys

jurisdiction under rules 130 and 4(2) (a) of the Rules, to entertain the application. Rule 130 of the Rules, provides as follows:

"130. In all proceedings pending whether in the Court or High Court or incidental to, or consequential upon any proceeding in court the provisions of these Rules shall apply, but without prejudice to the validity of anything previously done;

Provided that:

- (a) If and so far as it is impracticable in any such proceedings to apply the provisions of these rules, the practice and procedure heretofore obtaining shall be followed; or*
- (b) In any case of difficulty or doubt the Chief Justice may issue practice notes or directions as to the procedure to be adopted."*

The above provisions, in our reading, allow the use of the practice and procedure obtaining before the coming into force of the Rules where the provisions of the Rules are silent in respect of any proceeding in the Court or High Court including proceedings which are preparatory, or incidental to or consequential upon any proceeding in court. Much as the provisions presuppose pendency of a proceeding to the Court, the

applicant has not referred us to any existing practice and procedure that would apply instead of the Rules, assuming, which is not, it was proper for the Court to entertain an application without pendency of a proceeding. In the circumstances, we find that, the respective provisions do not confer jurisdiction to the Court to entertain an application in the absence of a pending proceeding.

Mr. Ngulo has also cited the provisions of rule 4(2) (a) of the Rules. For proper understanding of the provisions, we find it necessary to cite the provisions of rule 4(1) and (2) of the Rules which provide as follows:

"4-(1) The practice and procedure of the Court in connection with the appeals, intended appeals and revisions from the High Court, and the practice of the Court in relation to review and reference; and the practice and procedure of the High Court and tribunals in connection with appeals to the Court shall be as prescribed in these Rules or any other written laws, but the Court may at any time, direct a departure from these Rules in any case in which this is required in the interest of justice.

(2) Where it is necessary to make an order for the purposes of-

(a) dealing with any matter for which no provision is made by these Rules or any other written law;

(b) better meeting the ends of justice; or

(c) preventing an abuse of the process of the Court,

the Court may, on application or on its own motion, give directions as to the procedure to be adopted or make any other which it considers necessary.”

Under the above provisions, it may be clear to us, the power of the Court to give directions as to the procedure to be considered is in respect to appeals, intended appeals, revisions, review and reference which may include, in our view, other proceedings incidental or preparatory thereto. It does not apply in a situation like this where there is no pending appeals, intended appeals, revisions, review or reference before the Court. Neither can the Court make “any other order” in the absence of such pending proceedings. We may wish to add that, the above rule is only limited to procedure and practice. Never was it intended to allow the Court to assume jurisdiction that it does not have.

Mr. Ngulo has referred us to our decisions in **CRDB Bank PLC (Formerly CRDB (1996) LTD) v. George Kilindu** (supra) and **TPB Bank PLC (Successor in Title to Tanzania Postal Bank) v. Rehema**

Alatunyamadza and Two Others (supra). We have read the authorities and we find that they are not relevant in this application. We shall explain.

In **CRDB Bank PLC's** case, the appellant lodged a notice of appeal in its new name without showing that she was a successor of the judgment debtor. Subsequently, she lodged the record of appeal and memorandum of appeal under the new name indicating that she was a successor of the judgment debtor. Further, as stated at page 9 of the decision, there was no any evidence of change of name in the record of appeal. Neither was there "an order of the trial court changing the names of those parties". The Court, guided by the principle in **Inter-Consult Limited v. Mrs Nora Kassanga and Another** (Civil Appeal No. 79 of 2015) [2029] TZCA 164 (4th February, 2019) held that "*clting of all these new names for the appellant without leave or order of the court is a fatal irregularity which affected the competency of the entire appeal*". In reaching to such a conclusion, the Court observed at page 12 of the decision as follows:

"Throughout the proceedings at the High Court the current appellant was referred to as CRDB (1996) Limited. We are therefore unable to discern as when did the appellant change her

name as this was not entirely addressed to us by Mr. Ngowi."

In **Inter-Consult** case relied upon in the **CRDB PLC** case, the change of the appellant's name as can be seen at page 10 of the judgment, occurred during trial and the appellant did not formally or at all apply for substitution of name. Consequently, the judgment was delivered in her previous name. However, in the notice of appeal and record of appeal, the appellant cited the new name. The Court observed:

*"Be it as it may, we agree with Mr. Vedasto that substitution of the appellant's name from International Engineering Consultancy Services Ltd to Inter Consult Ltd without any **specific order of the trial court** was an irregularity which does not fall within the ambit of section 96 of the CPC." [Emphasis is ours]*

Yet in **TPB Bank PLC** case, it is clear from page 9 thereof that, when the notice of appeal was being lodged, the appellant was still using its previous name. The notice of appeal, therefore, was instituted in the previous name. Since at the institution of the appeal the name had already changed, the same was instituted in a new name. Until the date of hearing, however, the appellant had not made any application to amend the notice of appeal to reflect the new name. The Court held that:

“We wish to state that the Court might take Judicial notice of any change brought by the operation of the law but this alone does not give the appellant an automatic right to waive her legal obligation to make an appropriate application to effect the change. We agree with the counsel for the respondent that, the appellant ought to have made formal application to the Court to effect change of the name of appellant before instituting the current appeal.”

From what we have exposed herein above, we do not think that the facts in the applicant’s intended application are similar with those obtaining in the cited authorities. Neither does any of the authorities allow an application for change of name in the absence of pending appeal, intended appeal, revision, review or reference. For, as we have seen, in both the two cited cases, there were notices of appeal and record of appeal. The defect which rendered the respective appeals incompetent arose from the omission to apply for the amendment of the notice of appeal so that the name of the appellant in the notice of appeal and record of appeal would tally. In any event, mere worries of the counsel that his intended application might be found incompetent cannot be a justification for the Court to assume jurisdiction which it does not have.

In view of the foregoing discussions, therefore, we find the application improperly before us and we strike it out. We shall in the circumstances not give an order as to costs.

DATED at DAR ES SALAAM this 13th day of May, 2024



A. G. MWARIJA
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

A. S. KHAMIS
JUSTICE OF APPEAL

The Ruling delivered this 15th day of May, 2024 in the presence of Ms. Joyce Jonazi, learned State Attorney for the Applicant and Mr. Haron Oyugi holding brief for Mr. Franco Malema, learned counsel for the Respondents; is hereby certified as a true copy of the original.




KINGWELE

O. H. KINGWELE
DEPUTY REGISTRAR
COURT OF APPEAL