

**IN THE HIGH COURT OF TANZANIA**  
**AT ARUSHA**  
**MISC. CIVIL APPEAL NO. 12 OF 2000**

**WILLIAM GODFREY URASSA     ... .. APPELLANT**

**- Versus -**

**TANAPA ARUSHA ... .. RESPONDENT**

**(Appeal from the decision of the Industrial Court at Arusha)**

**(A. A. M. SHAYO – DC)**

**Dated the 28<sup>th</sup> day of July, 2006**

**In**

**Trade Dispute No. 11 of 1993**

**Dated the 11<sup>th</sup> March, & 2<sup>nd</sup> June, 2009**

**RULING OF THE COURT**

**Before Mmilla, B.M.; Chocha, N.P.Z.; and Sambo, K.M.M.; JJJ:**

**Mmilla, J.:**

Twenty years ago, that is on 29.5.1989 the applicant, William Godfrey Urassa was interdicted by his employer “Tanzania National Parks” on allegations of theft of his employer’s money. He was prosecuted before a court of law, but on 20.1.1993 he was found not guilty and acquitted. He was briefly reinstated in February 1993, but on 18.5.1993 had his services terminated. After protracted unfruitful negotiations with his employer which were handled by the Organization of Tanzania Trade Unions (OTTU), he instituted Trade

Dispute No. 11 of 1993 whose decision in that Tribunal is the subject of Misc. Civil Appeal No. 12 of 2000 before us.

This appeal was fixed for hearing on 8.9.2008. On that day however, the hearing could not proceed following the information which was given to us by learned counsel Mwaluko that upon being served with a copy of the record of appeal on that very morning he was prompted to file a notice of preliminary objection on a point of law. Properly so in our view, he has requested this court to tackle the preliminary objection first before proceeding, if at all, with the main matter before the court.

The preliminary point he has raised is that the appeal is misconceived and bad in law as it is against a non – existing legal person, not capable of suing or being sued, referring to the respondent TANAPA, Arusha. Relying on the provisions of section 8 (1) (a) and (b) of the National Parks Act, Cap. 282 of the Revised Edition, 2002, learned counsel Mwaluko has submitted that the only body corporate which is capable of suing and being sued is the “Trustees of the Tanzania National Parks”. Learned counsel Mwaluko has cited four cases in support of his point. They include those of **The Registered Trustees of the Catholic Diocese of Arusha. v. The Board of Trustees of Simanjiro Pastoral Education Trust, High Court (T), Civil Case No. 3 of 1998 (unreported), Registered Trustees of Arusha Hellenic Community and Another v. George Tsakris and 26 others, Civil Case No. 15 of 1995, Arusha Registry (unreported), NBC**

**(1997) Ltd v. Thomas K. Chacha t/a Ibora Timber Supply (T), Mwanza Civil Application No. 3 of 2000, (unreported) and Linus F. Shao v. The National Bank of Commerce Civil Appeal No. 36 of 2000, Mwanza Registry (unreported).** He is requesting this court to strike out this appeal for being incompetent.

On his part, learned senior council Mahatane has denied in the first place that TANAPA, Arusha is non – existent. He has submitted that although its corporate name is “The Trustees of the Tanzania National Parks”, this entity trades as “TANAPA, Arusha”. According to him, it invites the general public to identify it as such. He has asserted therefore that, by general reputation the respondent is known as TANAPA. He has added that it has been conducting correspondences with the appellant or with several other people outside itself on its “letter headed papers” which describe and identify the organization as “TANAPA” or as “Tanzania National Parks.” He demonstrated this by filing annexure “A” to verify his point. He submitted therefore that there is in existence an organization generally known and styled variously as TANAPA of Arusha or as “Tanzania National Parks,” but which can sue or be sued only in its corporate name of the Trustees of Tanzania National Parks”. He has submitted therefore that the view held by the respondent’s advocate that the respondent does not exist is not true in the circumstances of this case, adding that the court decisions his learned friend has cited based on non – existence of the party in the

suit which is not the case in our present matter, thus distinguishable. He has prayed this court to dismiss the preliminary objection.

On the other hand however, learned senior counsel Mahatane has admitted that Misc. Civil Appeal No. 12 of 2000 and proceedings in Industrial Court of Tanzania in Trade Dispute No. 11 of 1993 were brought in the wrong name of the plaintiff but who was existing. In his humble view, the redress in such a situation is by amending such a defect in order to set the matter correctly by removing the wrong name of the appellant (applicant) and putting in its place the proper name of “The Trustees of Tanzania National Parks” instead of striking out or non – suiting the Appeal or Application in terms of Order 1 rule 1 and 2 of the Civil Procedure Code Cap. 33 of the Revised Edition, 2002. He has also cited the proviso to Order VII rule 11 of the same Code as was amended by G.N. No. 228 of 1971. senior learned counsel Mahatane has supported his argument with two cases of **George and company (M.P. George t/a George & Co. in Amended Plaintiff) v. Pritam’s Auto Service (1955) 22 EACA 233** and **A.N. Phakey v. World Wide Agencies, Ltd 15 EACA 1.**

He has also aired concern over the long unreasonable and unexplained inordinate delay in raising the preliminary objection on the nomenclature for the respondent. He has submitted that the application was commenced in the name of “TANAPA, Arusha” and variously referred to as “Tanzania national Parks “ as the respondent way back in about 15 November, 1993, but that the

objection being raised now was never raised, which is now a period of about 15 years of battle in the judicial fora. He has therefore pleaded the equitable principle of stoppel by larches. He has relied on the case of **Issa Mohamed v. Regional CID officer (1979) L.R.T. 12** and **Abdu Assabwala v. Abdu Saeed (1957) EA. 597.**

We have carefully gone through the submissions of both counsel for the parties. We note that they agree that in law; only two types of persons can institute legal proceedings (sue) or defend such proceedings (be sued). These are the natural and legal persons. In the latter category of legal persons we have companies and trustees which become body corporate upon being granted certificates of incorporation after registration or after being created by statute under the relevant laws. There is no hazarding that such registered trustees can only sue or be sued in the corporate name(s). This is what was exactly expressed in the case of **The Registered Trustees of the Catholic Diocese of Arusha. v. The Board of Trustees of Simanjiro Pastoral Education Trust, High Court (T), Civil Case No. 3 of 1998 (unreported)** which is one among those being relied upon by learned counsel Mwaluko. We hasten to say that what is expressed above is the correct legal

position. An unincorporated body or trustee cannot sue or be sued in any court of law as it has no legal personality.

The facts in the case of **the Registered Trustees of the Catholic Diocese of Arusha v. The Board of Trustees of Simanjiro Pastoral Education Trust** were similar to those of present case. In that case, the point which was taken by way of preliminary objection was that at no time had there been in existence a legal entity capable of suing or being sued in law known as the “**The Registered Trustees of the Catholic Diocese of Arusha**” as was required by the provisions of section 6(1) of the Trustees Incorporation Ordinance, Cap. 375 of the Laws. The Administrator - General of Trustees had signified his consent of acquiring interest in the suit land to a corporate body known as “**The Registered Trustees, Diocese of Arusha**” and not “**The Registered Trustees of the Catholic Diocese of Arusha.**” That court held the view that “**The Registered Trustees of the Catholic Diocese of Arusha**” was non existent; therefore that it had no power to sue or be sued. See also the cases of **Registered Trustees of Arusha Hellenic Community and Another v. George Tsakris and 26 others, NBC (1997) Ltd v. Thomas K. Chacha t/a Ibora Timber Supply (T), and Linus F. Shao v. The National Bank of Commerce (supra).**

In our present case, Misc. Civil Appeal No. 12 of 2000 and proceedings in Industrial Court of Tanzania in Trade Dispute No. 11 of 1993 were brought in the name of TANAPA, Arusha. However, in terms of section 8 (1) (a) and (b) of the National Parks Act, Cap, 282 of the Revised Edition, 2002, the only body corporate which is capable of suing and being sued in the circumstances was “The Trustees of the Tanzania National Parks.” That section provides that, we quote:

“Section 8 (1): There shall be established for the purposes of this Act a Board of Trustees which shall-

(a) be a body corporate by the name of “the Trustees of the Tanzania National Parks” with perpetual succession and a common seal.

(b) In their corporate name be capable of suing and being sued.”

We have also considered the submission of senior learned counsel Mahatane to effect that TANAPA, Arusha is merely a wrong name but exists. We are of the firm view that on the guidance of **The Registered Trustees of the Catholic Diocese of Arusha. v. The Board of Trustees of Simanjiro Pastoral Education Trust** whose facts, we have said, are similar to the present case, TANAPA, Arusha in our present case is non existent, thus could not sue or be sued. The cases of **George and company (M.P. George t/a George & Co. in Amended Plaintiff) v. Pritam's Auto Service and A.N. Phakey v. World Wide Agencies (supra)** he relied upon in this regard are distinguishable. In the circumstances, the provisions of Order 1 rule 1 of the Code cannot properly be applied.

Senior learned counsel Mahatane has also resorted to the equitable principle of estoppel. We are of the unanimous view that much as we agree, particularly basing on the evidence constituted in annexure "A" that "The Trustees of the Tanzania National Parks" was allegedly trading as "TANAPA, Arusha" as well as the



various correspondences between the parties in this same name now being contested as non- existent that it has taken too long (about 15 years) for such an objection to be raised, in our view the fate tilts against the applicant.

Apart from the finding we have just made above that TANAPA, Arusha is non existent; we also heed to the fact that it is a settled principle of law that a point of law can be taken at any stage of the case, including at the level of appeal. We have in mind the case of **F.A. Kilewo v.Eleakira Pendael & Another, Civil Appeal No. 4 of 1994, High Court (T), Moshi Registry (unreported).**

In our case, lack of objection as to non – existence of the defendant either out of ignorance, or inadvertence or even complicity between the parties cannot be condoned by the court if it is glaringly clear as is the case here that in law such a person does not exist. The cases of **Issa Mohamed v. Regional CID officer (1979) L.R.T. 12** and **Abdu Assabwala v. Abdu Saeed (1957) EA. 597** cannot bail them out of this.

In the circumstances, the principle of laches cannot apply here.

In conclusion, we are satisfied that the preliminary objection has merits which we accordingly uphold. In consequence, we strike out this appeal for being incompetent. Costs to be in the course.

**(Sgd)**

**Mmilla, B.M.**

**Judge.**

**28.5.2009**

**(Sgd)**

**Chocha, N.P.Z.**

**Judge.**

**28.5.2009**

**(Sgd)**

**Sambo, K.M.M.**

**Judge.**

**28.5.2009**

**Date:** 2/06/2009

**Coram:-** K. M. M. Sambo, J.

**For the Appellant:** Mr. Mahatane, Advocate.

**For the Respondent:** Mr. Mwaluko, Advocate.

**B/c:** Mariamu.

**Order:** The ruling of the court in respect of the preliminary objection is read in court today in the presence of both learned advocates for the parties as indicated in the coram hereinabove.

**AT ARUSHA.**

(Sgd)

**K. M. M. SAMBO**

**JUDGE**

**2/6/2009**



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

**F. S. K. MITUNGI**

**DISTRICT REGISTRAR**

**ARUSHA**

**BMM/jn.**

1/7/09