

IN THE HIGH COURT OF TANZANIA

AT DODOMA

MISC. CIVIL APPLICATION NO. 4 OF 2009

(Arising from Civil Case No. 7 of 2002)

MAGRETH ALEX MAGUMULA)

as administratrix of the Estate of ALEX MAGUMULA)..... APPLICANT

VERSUS

NATIONAL MICROFINANCE BANK LIMITED RESPONDENT

RULING

05/8/2010 & 10/8/2010.

KWARIKO, J:

In this application the applicant Margreth Alex Magumula in her capacity as an administratrix of the estate of the late Alex Magumula through the services of Njulumu & Co. Advocates is asking this Court to grant her leave to file an application to be party to the suit out of time.

In response to this application, the respondent National Microfinance Bank has through the Services of CSB Law Chambers raised preliminary points of law to the effect that;

- a) the honourable court has not been properly moved to grant the prayers sought;

- b) that the applicant lacks *locus standi*,
- c) that the honourable court lacks jurisdiction to entertain the matter.

On 4/5/2010 when this matter came up for hearing of the said points of law upon request by the Counsel for the parties, this court allowed them to argue the preliminary objection by way of written submissions and they have complied with this order.

Now going through the first preliminary point of objection, when one reads it, gets an impression that this application was perhaps brought under wrong provision of the law which do not mandate this court to grant the prayers craved for. But upon going through the written submissions of the respondent's counsel, I find that the respondent's complaint on this particular point to be essentially that this application is not maintainable in view of the decision of this court made by my learned sister Madam Justice Shangali on 12/12/2008.

I have gone through the said ruling and I have noticed that in that ruling this court made an order expunging the two amended complaints from the court record. One was expunged on the ground that it was filed in Court belatedly i.e on 17/10/2006 instead of 28/9/2006 the date which was fixed by the Court. And the second one which was file on 7/3/2008 was expunged from the court record because

the Court was satisfied that it was unceremoniously filed without any order to that effect.

My understanding of this order expunging both amended complaints from the court record was to bring to an end the proceedings in Civil Case No. 7 of 2002. To this effect the Court said

"once the complaint has been expunged the whole suit is dead".

Now this being the position, I find that the relief craved for by the applicant to be untenable because there is no any existing suit between the parties which if granted leave to file an application out of time to be joined as party, she can be joined as a party. This prayer is therefore not practicable.

For the foregoing reason, I sustain the first preliminary point of law. And for this reason, I find no need of discussing the remaining two preliminary points of objection which I also find to be attractive.

Accordingly this application is dismissed with costs.

Order accordingly.


(M. A. KWARIKO)

JUDGE

10/8/2010

AT DODOMA

10/8/2010

Applicant: Present/Mr Nyangārika Advocate.

Respondent: Present.

C/c: Mr Emanuel.




(M. A. KWARIKO)

JUDGE

10/8/2010