IN THE HIGH COURT OF TANZANIA.

(DISTRICT REGISTRY)

AT DAR ES SALAAM.

CIVIL APPEAL NO. 169 OF 2000

(Original Emp. Civil Cause No. 65 of 2003, of the Resident Magistrates's Court of Dar es salaam, at Kisutu)

ALLY MOHAMED AND 18 OTHERS.....APPLLICANTS.

Versus;

M/S SUNGURA TEXTILE (1997) LTD.....RESPONDENT.

ORDER.

16/02/2011 & 20/04/2011

Utamwa, J.

This is an order in respect of an issue of whether or not the representation of the applicants (**Ally Mohamed and 18 others**) before this court, by way of power of attorney is proper in law, which said issue was raised by this court *suo motu*. The applicants in this application against the respondent (**M/S Sungura Textile (1997) Ltd**) are represented by one **Mr. Mzuwanda Rashidi Gongo Mvalauhenga** (Mr. Mzuwanda) by virtue of the said power of attorney, the instrument which was dated 4th September, 2007, signed by the applicants, well

registered and for which stamp duty was accordingly paid. The chamber summons in respect of this application was filed in court on 28/8/2007 for an extension of time to file a notice of appeal and the actual appeal (to the Court of Appeal) out of time, against the ruling of this court dated 9/2/2005 (Malay, J. as he then was). A further recount of this matter is necessary for the sake of a trouble-free appreciation of this verdict.

In 2003 the applicants filed an appeal before this court against the decision of the Resident Magistrates' Court of Dar es salaam, at Kisutu, in which said suit (Employment Civil Cause no; 65 of 2000) they were claiming among other things some terminal benefits following the termination from their employment with the respondent. The appeal was struck out by the above cited order of Mlay J. (as he then was) for incompetence. In that appeal Mr. Mzuwanda had also purportedly represented the applicants (as appellants) through this same style of power of attorney. In striking out the appeal Hon. Mlay, J. held *inter alia* that the power of attorney was inoperative for want of authority of all the applicants. Following this verdict the applicants filed the application at hand, this time believing that they are smart enough by filing the above mentioned registered power of attorney.

The application was assigned to me after the demise death of my predecessor Judge, (My sister, **Mbise, J.** as she then was), and I accordingly fixed the 30th day of November, 2010 as a date for hearing the preliminary objection which had been raised by the respondent against the application. It was on that date, upon perusal of the record, that I *suo motu* sniffed this irregularity in respect of the applicants' representation, I thus ordered the parties (the respondent being legally represented by **Mr. Marwa** learned Counsel) to address me on whether or not it was legitimate for Mr. Muzwanda to represent the applicants who were also in court by way of the power of attorney. It is worth noting also that at all the material time when the matter was called upon before the court the applicants accompanied Mr. Mzuwanda. Upon the agreement by the parties to file written submissions as the mode of addressing the court, I made an order fixing the schedule for them to file their respective submissions as follows; Mr. Mzuwanda's written submissions in chief had to be filed on or before

14/12/2010, reply by the respondent on 24/12/2010 and rejoinder by Mr. Mzuwanda (if he had any) by 3/1/2011, and the matter had to come for mention on the 16/2/2011 for further orders.

On the said 16/2/2011 however, the applicants and their Mr. Mzuwanda were in court though no submissions had been filed as per the previous court order. The respondent was not in court, but I noted the record as containing a letter dated 24th December, 2010 from the respondent's advocates office (The Professional Centre) informing the court that they had not filed any reply submissions as per the court order because Mr. Mzuwanda had not filed any submission in chief.

When I inquired from Mr. Mzuwanda as to why the submission in chief had not been filed as per the court order, he responded to this effect; that the applicants had thought that so long as the power of attorney dated 4th September, 2007 had been registered by the Registrar of Titles and all the papers were available in court, there was no need to comply with the order. The other reason was that, so long as this court had previously ordered for the matter to proceed for hearing of the preliminary objection, it could not thereafter, change mind and order parties to make submissions in respect of the inquiry into the propriety of the representation.

When I examined Mr. Mzuwanda on his interests in the matter justifying the representation he informed me that; his interest was to assist the applicants who had no money following an abrupt termination from their employment, and they were advised to engage an advocate or a person with powers of attorney, and unlike the previous unregistered power of attorney which had been rejected by Hon. Mlay, J, the current one is duly registered. He added that, the late Hon. Mbise J. (as she then was) also considered this power of attorney as proper, hence she made an order to proceed with the hearing. For this reason Mr. Mzuwanda said, the law could not allow me to inquire into the representation. He said however, that he did not know which law makes such the prohibition.

On a further examination on his relationship with the applicants Mr. Mzuwanda branded himself, as a "*Nearby-Gentleman*" to them aimed at helping

them because, they know him and they had approached him for the help, and further that he is not among the ex-employees of the respondent like the applicants. He said also that the applicants had paid nothing to him; hence his main benefit in this matter is to see the applicants getting their rights. Furthermore, Mr. Mzuwanda told the court that he is not an advocate of the High Court, and he is not aware if the applicants had made any effort to obtain legal aid before they approached him.

Again, Mr. Mzuwanda informed the court that, the applicants had asked his help because they do not have what he termed as *"Court Knowledge"* which said knowledge he (Mr. Mzuwanda) has following the fact that he once worked with the judiciary. Over again, he said that, for this knowledge he represents different persons in many other cases of this nature, he gave examples of those cases as including the following; the one before Hon. Mushi, J., the other before Hon. Mutungi, J., and others which have been finalized before Hon. Mruke, J. against whose decision he is preparing an appeal. Mr. Mzuwanda also told this court that in the High Court Land Division he is representing one **Amina Mwangu** who is suing against **Isaya Mfunga Hema**. He added that, he is helping all these persons because they do not have money and they live together in Gongolamboto location (of Dar es salaam).

To bolster his so called *"Court Knowledge"* Mr. Mzuwanda told the court that since November, 2010 he is attending evening classes on legal studies at a certificate level in the University of Dar es salaam, and he widens his *"Court Knowledge"* by representing people in courts to get their justice. He also made it clear that, though representation of persons in court is a duty for advocates, he does it because the persons he represents are poor, and he believes that what he is doing is not a sin, and he does not know if his acts are illegal.

Having been furnished with this narrated information as the basis for the representation of the applicants, I feel that I have availed to Mr. Mzuwanda an adequate right to be heard though he had waived it by his inexcusable default to file the submissions. I indeed thought that his default was a result of ignorance of law on his part and the applicants that is why I gave him a second chance of

submitting through the examination, I now feel justified to make this order. I did not need to hear the absent respondent for this issue because its conduct appeared to be of a disinterested party who could unnecessary delay the matter, this conduct is evident in its being absent without any prior notice to the court despite its knowledge of the date for which the matter was coming before me. After all, this issue was raised by this court *suo-motu* as intimated herein above and is related to a point of law which must be decided by the court whether or not raised by the parties.

It is also pertinent to disclose here that, in combing the record with the view of composing this order, I revealed an affidavit lodged in court by the applicants on 27 December, 2010 (without any notice to me), signed by one of the applicants, Ally Mohamed, apparently on behalf of all other applicants and accompanied with a certificate of urgency. Following the nature of the contents in both the certificate of urgency and the affidavit I will first deal with them and make a finding before I revert to the main issue of representation.

In essence the affidavit and its certificate of urgency are trying to show that the applicants have lost faith on me, they allege that justice will not be done to them following the fact that I have decided to inquire into the legality of their representation through Mr. Mzuwanda, and further that I am set to hear or dismiss their appeal, which said steps they allege, are delaying tactics of their case. Though the applicants in the affidavit are not expressly requesting me to disqualify myself from presiding over the matter, they indicated that the matter be re-assigned. The affidavit can reasonably be interpreted as a request for me to disqualify myself from presiding over this matter for the reasons stated therein, except that the applicants could not expressly say so following the fact that they are all laymen represented by their fellow layman. I have given a due consideration to the affidavit, but I have made my mind and decided to disregard it and not to disqualify myself from recording this order on the following grounds; In the first place the affidavit was filed after I had decided to inquire into the legality of the representation and after I had made an order for the parties to file their respective written submissions, and at the time of lodging the affidavit in court, Mr. Mzuwanda or applicants had already defaulted to comply with the

court order for filing the written submissions in chief by two clear weeks because the submission had to be filed on or before 14/12/2010. It is common ground therefore that, the complaints into affidavit were targeted to circumvent the order I had made regarding the inquiry into the legality of the representation. It is also apparent that the affidavit was aimed at avoiding the legal consequences of the default to file the submissions which the court had ordered. Courts of law cannot give due regard to such ingenious steps taken by parties to court proceedings with the view to meander the due course of justice by defaulting court orders and avoiding legal consequences for unjustified defaults. Court orders, unless legally rendered inoperative, must be respected irrespective of the wishes of the parties, and irrespective of the absence of a specific rule regulating the situation of the matter before the court, this is one of the reasons why the provisions of S. 95 of the Civil Procedure Code Act, 1966 (Cap. 33, R. E. 2002) exist for purposes of vesting courts with inherent powers to make orders for the sake of justice, see also; **Aero Helicopter (T) Ltd V F.N. Jansen [1990] TLR 142 (CA).** Such orders therefore, if not obeyed, courts will be reduced to mere toothless dogs, hence the failure to exercise their constitutional mandate of performing their adjudicative duties.

Again, when I examined Mr. Mzuwanda in court on the 16/2/2011 (on which said date the affidavit had already been lodged in court more than a month previously), he did not alert the court on the existence of the affidavit and its certificate of urgency, otherwise I would have first resolved the issue of whether or not I had to disqualify myself before I could proceed to inquire into the legality of the representation through examining Mr. Mzuwanda.

For the above stated reason and as I intimated above, I became aware of the complaints-affidavit belatedly when I posed to compose this order and after I had heard Mr. Mzuwanda on the validity of the representation by examining him in court. I must thus proceed to compose and pronounce this order for; our legal system is to the effect that, once a judicial officer has heard a matter, he has a duty to accomplish it by delivering his verdict unless there is a legally recognised reason, which is not the case in the matter at hand. Under this system a party who will be aggrieved by the verdict will be entitled to appeal to a higher court or

find other legal means (if any) to reverse that verdict. I wish to be clear of one thing at this stage; i. e. as to whether or not I will also proceed to preside over the hearing of the preliminary objection now pending before me after noting the complaint-affidavit and after pronouncing this order, is a matter not conveniently discussable in this forum.

Another ground for disregarding the affidavit is that, I consider it to be a creature of a serious misconception of the law on the part of the applicants and their queried representative, Mr. Mzuwanda. In the first place they did not need to complicate the procedure by filing such complaints through the affidavit with the certificate of urgency ending up paying unnecessary attestation and filing fees as if it was a chamber summons to be heard by the court. It would practically suffice for the applicants, whom Mr. Mzuwanda alleges have no money, to lodge an oral or formal complaint in a form of a letter if they had genuine reasons in support thereof. Actually their complaint that I am set to hear or dismiss their appeal is footed on a baseless fear because, there is currently no any appeal pending before this court for hearing, their appeal was struck out by Hon. Mlay J. (as he then was) as I observed above, what is before me ready for hearing is only a preliminary objection raised by the respondent in respect of the application for extension of time as I intimated above, but they have disclosed no any reason, let alone a sufficient reason, as to why they do pre-judge that I will dismiss it. There is therefore, no any genuine worry on the part of the applicants and their Mr. Mzuwanda to justify the complaints.

I also dismiss their complaint that my inquiry into the validity of the representation amounts to a delaying tactic of their case because, it is a duty of any court of law to preside over matters in accordance to law irrespective of the indifferent approach of the parties, see **John Magendo v. N.E.Govani (1973) LRT. 60**, and it is more so where laymen like the applicants and their Mr. Mzuwanda are involved into the proceedings, which is in fact *a situation of a blind man leading other blind colleagues into a ditch*, this court, as a court of law must thus intervene to serve the situation. I equate this situation to blind persons because from the record, one can witness how the applicants have fallen into the helpless hands of Mr. Mzuwanda who pretends to help them through his *trial and error*

methods. The kind of the applicants' documents and the style of filing them in court speak loudly to that effect; examples of these documents are the complaints-affidavit and its certificate of urgency which I have held above were unnecessary and results of a serious misconception of law. Another document in the record is the unsworn document titled "RE; JOINT REPLY TO COUNTER AFFIDAVIT AND PRELIMINARY OBJECTION". These documents are actually strange creatures and not recognised by our procedural law. Again, the deliberate default by the applicants to file their submissions ordered by the court is a testament of ill advise to them for, had they obtained a skilled advise they would have filed their submissions in time containing reasons to support the representation, and if at all what Mr. Mzuwanda informed the court during the examination were their actual reasons they would have involved them into the submissions. It was practically irrational for them to absolutely and deliberately disobey the court order for the belief they entertained in their minds. I would also venture to say that even the striking out of the appeal before Hon. Mlay J. was a result of an uninformed advice on the part of the applicants. In fact, even the course which the applicants have opted after Hon. Mlay J. had struck out their appeal (i.e. filing the application at hand) leaves a lot to be desired. No person would have advised the applicants to resort to this course unless he is ignorant of the obvious distinction between the legal effect of striking out an appeal on one hand and dismissing it on the other, or unless he has undisclosed interests into the course so opted. However, it must be noted here that, my remarks in this respect are a mere advisory precaution to the applicants for the sake of doing justice, the choice whether or not to rely upon the advice of Mr. Mzuwanda is theirs, as long as the law will not be offended by their choice in any way.

Still in the allegation that the inquiry I launched is a delaying tactic of the case, I would firmly say that, it is the applicants themselves who are delaying their own case by their intentional and unjustified default of the court order, and by avoiding that process of justice ordered by the court. In fact we could not rush to finalize the case while in suspicion of the applicants' representation, otherwise this would amount to *justice hurried justice buried.* Indeed, I would have proceeded to make my order upon Mr. Mzuwanda's default to file his submissions for, the law is to the effect that failure to file written submissions as

per the court order is tantamount to failure to be prepared for hearing, and that omission justifies a court to proceed to the verdict, see a ruling in **Asulwike Kamwela v. Semu Mwazyunga, HC, (DC) Civil Appeal No; 13 Of 1997, at Mbeya,** and an order in **Wendeline Mahundu v. Nicodemu Kasikana, (PC), HC. Civil Appeal No; 82 Of 2005, at Dare Salaam**. But in the matter at hand, despite the failure by Mr. Mzuwanda to file his submissions as ordered by the court, I believed that examining him in court before making the order would avail him and the applicants with ample right to be heard as laymen, that is why I accordingly examined him, hence this order. This was therefore, a course in favour of the applicants and not otherwise. The applicants and their Mr. Mzuwanda cannot thus be heard complaining that this course which was in their favour, amounted to a delaying tactic against their case, otherwise this is *a bite against the feeding finger,* which is not expected of any person genuinely seeking rights before a court of law.

Under the above circumstances the allegations that I won't do justice to the applicants on apparently accusation of bias cannot be entertained because, the applicants, thorough their Mr. Mzuwanda seem to be hiding their deliberate foul-plays under this umbrella of these complaints. Courts of law are not easily tricked by such kind of babyish catches. In notifying the public that courts of law are capable of detecting such foul-games in court proceedings, and in discouraging the trend this court in **Timu Mbimba v. Kakweja Mwakujonga, (PC) High Court Civil Appeal No. 81 of 1994, at Mbeya (Mrema, J.** as he then was) observed in dealing with an appeal, and I quote him for a readymade reference;

> *"The respondent did not appeal to date and instead he has been using his chicanery tricks with a view to misleading the courts to achieve what he desires against justice. <u>But the respondent forgets that reasonable and sane court has eyes and ears to discover such tricks</u>"* (emphasis is mine).

The applicants and their Mr. Mzuwanda should thus stay alerted of the soundness of courts' mind.

I am settled in mind therefore, that this is a pure case where a court of law must, as I hereby do, resort to the instructions of the court of appeal in **Joseph Chuwa and Hashim Motto v. Republic, Criminal Appeal No. 75 of 2006, at**

Arusha following its previous decision of **Rugaimukamu v. Inspector General of Police and the Attorney General, Civil Appeal No. 13 of 1999,** where it was held to the effect that, insincere allegations of bias against judicial officers aimed at circumventing justice should be disregarded by courts, and further that, only evidence of three factors may cause a judicial officer to disqualify himself from presiding over a matter assigned to him following allegations of bias, **one;** bad blood between a complaining litigant and the judicial officer concerned, **Two;** close relationship between the judicial officer and the adversary party, and **three;** the judicial officer or a close member of his family having an interest in the outcome of the litigation other than the administration of justice. In this matter at hand there is no any allegation, let alone proof, of any one of the three factors just enlisted herein above. My interpretation to this decision of the Court of Appeal is that, it was aimed at curbing *decorated, but dishonest* complaints like those made by the applicants in their affidavit and certificate of urgency. I am therefore, justified to disregard the complaints and consequently I will proceed to compose this order for the sake of doing justice to the parties and for the sake of being true and faithful to the law because, as a judicial officer I am duty bound to be true and faithful to the law vide the ethical requirement set by rule 2 (A) (1) of the Code of Conduct for Judicial Officers of Tanzania.

Again, before I engage myself in tackling the issue of representation I will resolve one remarkable dilemma in the minds of the applicants and their Mr. Mzuwanda. I would alert them that, according to the record, the late Hon. Mbise J (as she then was) did not make any order signifying that the representation under discussion is proper. It follows therefore that, the fact that she did not question the propriety of the impugned representation when she fixed a date for the hearing of this matter, does not in law preclude me from making the inquiry. Again, I am of the view that, even if the allegations by Mr. Mzuwanda that other Judges of this court do entertain his appearance before them by power of attorney are true (though I am not holding that they are in fact true), that is not necessarily the reason why I should also give him audience even if those Judges have made orders permitting Mr. Mzuwanda to appear before them in those other cases. It is our law, under the *Doctrine of Stare Decisis*, that a decision made

by one Judge of this court does not bind another Judge where that other judge has sufficient grounds to depart from that decision; **Ally Linus and Eleven others v. Tanzania Harbous Authority & the Labour Conciliation Board of Temeke District [1998] TLR 5;** This stance is pegged on the fact that all judges of this court enjoy concurrent jurisdiction in dispensation of justice. Furthermore, I alert the applicants and their Mr. Muzwanda that, I am not in law precluded from making the inquiry into the propriety of the representation merely because I had previously ordered the hearing of the preliminary objection to proceed; this is because this issue is based on a point of law and it could be raised at any time before the hearing took off.

I now examine the main issue of *whether or not the representation of the applicants through Mr. Mzuwanda by way of the power of attorney is proper in law under the circumstances*. My prompt answer to this question is an emphatic no, and I will vindicate my finding as demonstrated hereunder. I will start with re-stating the law of representation as it is applicable in this matter, being related to an appeal originating from a Resident Magistrates court. The general stance of the law, according to Order III rule 1 of Cap. 33, is that; any appearance, application or act in or to any court, may be made or done by the party in person or by his recognized agent or by an advocate duly appointed to act on his behalf, and under the auspices of Order III rule 2 (a) of Cap. 33 a person holding a proper power of attorney is a *"Recognized Agent"* who can perform any of the functions mentioned above, see the case of **Anyisile Anyabwile Nsaje (On Behalf Of Willy Anyigulile) v. The Mbeya Regional Land Officer and Attorney General, HC Misc. Civil Application No; 34 Of 1998, at Mbeya** and another decision in **Ahmed Ibrahim Bora v. Mehboob Abdulkarim Shivji and another, HC (Commercial Court), Misc Commercial Cause No. 17 Of 2007, at Dar es salaam**

Though Cap. 33 gives mandate for representation to *"Recognized Agents"* (grantees of powers of attorney) it does not define the term ***"Agent"*** and the phrase *"Power of Attorney"*. Neither, the Interpretation Of Laws Act (Cap. 1, R. E. 2002) provided for the definitions. But, according to Ss. 134 and 137 of the Law of Contract Act, (Cap. 345, R. E. 2002) an ***"agent"*** is defined as a person employed to do any act for another or to represent another in dealings with third persons and

no consideration is necessary to create an agency. S. 2 of the Stamp Duty Act (Cap. 189, R. E. 2002) defines *"power of attorney"* to include *any instrument empowering a specific person to act for and in the name of the person executing it.* This definition matches with the definition in **Parin A.A. Jaffer and another v. Abdulrasul Ahmed Jaffer and Two Others [1996] TLR 110 (HC)** which defined a power of attorney to mean *a formal instrument by which one person empowers another to represent him or act in his stead for certain purposes.*

However, the provisions of Cap. 33 just cited above should not be interpreted as providing an automatic right for representation by power of attorney to any person holding it. The provisions of other statutes must also be considered in examining the legality of a representation by power of attorney. In other words this representation is subject to some other conditions apart from the mere holding of the power of attorney. This is the reason why Order III rule 1 of Cap. 33 expressly instructs that any appearance, application or act of the party may be done by the party in person or by his recognized agent or by an advocate *"except where otherwise expressly provided by any law for the time being in force"*. It is for this reason that in **Julius Petro v. Cosmas Raphael [1983] TLR 346** this court was of the view that only genuine authorized agents are permitted by law to represent other persons by way of power of attorney. I would thus add immediately here that, in court proceedings of this nature, there must first exist genuine reasons (in the eyes of the law), before another person legally gets the authority to represent the party to proceedings by way of power of attorney. These genuine reasons form part of the conditions for such a representation.

The only person who can represent a party to court proceedings without such conditions is an advocate duly registered under the Advocates Act (Cap. 341, R. E. 2002), see s. 40 of Cap. 341. All other persons who are not registered advocates are subjected to the above mentioned conditions, otherwise they become unqualified so to act, and they are actually prohibited so to act, and they shall be liable on conviction to a fine not exceeding one million shillings or twelve months imprisonment or both, see Ss. 41 and 42 of Cap. 341. The permission for representation envisaged under S. 70 (a) of Cap. 341 is therefore, also conditional

as I observed here in above, see also **Julius Petro v. Cosmas Raphael** (cited above).

The two sub-issues which need my consideration in this matter at this juncture are these;

1. *What are the conditions (genuine reasons) for a proper representation by power of attorney*?

2. *Whether or not Mr. Mzuwanda's reasons for representing the applicants by powers of attorney amount to genuine reasons.*

As to the first sub-issue of *What are the conditions (genuine reasons) for a proper representation by power of attorney*? my settled views are these; the genuine reasons for this court to permit a representation by power of attorney, I would venture to say, include all reasons which may, before the eyes of the law, legitimately cause undue hardship for a party to appear and defend his case. The reasons may thus include, and not limited to; long-standing absence from the country or jurisdiction of the court, inability for prolonged serious illness or old age [see **Hamidu Ndalahwa Magesha Mandagani v. Raynold Msangi and Reda Farm & Livestock Partners, HC (Commercial Division), Commercial Case No. 52 Of 2007, at Dar Es Salaam**]. Other factors of the like, being beyond the control of the party to proceedings may form genuine reasons for the representation.

I now test the second sub-issue of *Whether or not Mr. Mzuwanda's reasons for representing the applicants by powers of attorney amount to genuine reasons.* As I did when testing the main issue, I promptly answer this second sub-issue negatively and I proceed to justify my answer. In the first place I would declare here that I have no problem with the format of the power of attorney held by Mr. Mzuwanda in the matter at hand, it is well signed, registered and stamp duty in its respect was accordingly paid. It is indeed a document which in law, courts have to presume under s. 94 of the Evidence Act, (Cap. 6, R. E. 2002), that it was so executed and authenticated, see also **Ahmed Ibrahim Bora v. Mehboob Abdulkarim Shivji and another** (cited supra). However, the propriety of the

power of attorney alone is not a conclusive warranty for a person to represent another person in court in the capacity as recognised agent through power of attorney. This is because, in law the power of attorney does not take place of a law practicing certificate issued to advocates under S. 34 of the Cap. 341.

To me genuine reasons highlighted above do not at all cover the reasons adduced by Mr. Mzuwanda for representing the applicants in the matter at hand; i.e. ignorance of the law and impecuniosities of the applicants, or the fact that Mr. Mzuwanda is the so called "*Nearby Gentleman*" to the applicants and he has what he calls "*Court Knowledge*" (whatever the two mentioned phrases may mean), or the fact that Mr. Mzuwanda is a student in certificate of law trying to improve his so called *Court Knowledge* through such kind of representation, or the fact that the representation is done gratis and the fact that Mr. Mzuwand and the applicants know each other as neighbours of the same locality of Gongolamboto.

In fact, what Mr. Mzuwanda is doing, by representing the applicants in this matter and many other persons in other cases he mentioned before me, is purely practicing law which is beyond the mandate of a "*Recognised Agent*" envisaged under Order III rule 1 and 2 (a) of Cap. 33. That practice is the exclusive domain of advocates as per s. 40 of Cap. 341. Well, his acts may not be a sin as he said, but they are illegal and prohibited as demonstrated above. It is actually clear as daylight that an act may not be a sin religiously, but it may be illegal, and a person who is incapable of detecting this clear distinction between sins and illegalities cannot safely represent others in courts of law the way Mr. Mzuwanda is doing.

Moreover, as I hinted herein above when discussing the sub-issue No. 1, the representation envisaged under Order III rule 1 and 2 (a) of Cap. 33 and the definitions of the phrase "*Power of Attorney*" and the term "*agent*" exhibited herein above presupposes that the recognised agent will act when the party to proceedings is not in court, see **Parin A.A. Jaffer and another v. Abdulrasul Ahmed Jaffer and Two Others** (cited supra) and the decision of the Court of Appeal in **Naiman Moiro .v. Mailejiet K.J. Zablon (1980). TLR. 274**. But in the matter at hand Mr. Mzuwanda has been appearing in court accompanied by the applicants themselves as indicated herein above. The presence of the applicants

in court accompanying Mr. Mzuwanda is also evident in the affidavit of complaints discussed herein above which narrates matters that had transpired in court on all the material dates (without affirming that the applicants had been informed of those matters by another person). This kind of representation is typically of an advocate, hence prohibited because, he (Mr. Mzuwanda) is by far, not an advocate. If this kind of Mr. Mzuwanda's freelance legal representation by power of attorney is condoned by courts of law its impact to our legal practice will be lethal; flood gates of illegal practices by a rampant group of people branded as *"Bush Lawyers"* will be opened, there will be no any meaning for having laws regulating representations in courts, poor Tanzanians will lose their rights for being misled, courts will be subjected to unnecessary inconveniences as they will miss the expected useful assistance from registered advocates in reaching into fair and just decisions, ultimately chaos will be an order of the day.

As a court of law, in this post script, I must precaution the applicants and Mr. Mzuwanda that Law is not practiced by any person who thinks is more argumentative than the actual party to court proceedings because, not all arguments are relevant to the process of justice. Legal Practice is a *Profession*, the Oxford Advanced Learner Dictionary of Current English, Oxford University Press, 8th edition, 2010, at page 1170 (by A. S. Hornby) defines the term *"Profession"* as a type of job that needs special training or skill, especially one that needs a high level of education. My brother, **Dr. Fauz Twaib** (currently a Judge of this court) in his book "The Legal Profession in Tanzania; The Law and Practice", LawAfrica Publishing (T) Ltd, 2008, at page 13-14 subscribed to this definition and added that, in English Language, the term *"profession"* denotes a much narrower concept than occupation, it embraces an exclusive class of particular occupations with certain distinct features. The combined definition above is highly persuasive on my part and I totally adopt it. Law in Tanzania is therefore, practiced by extensively trained persons certified by statutory authorities, it is a closely regulated and supervised profession because it deals with precious rights of others persons, it is for this reason that this court in **Ahmed Ibrahim Bora v. Mehboob Abdulkarim Shivji and another** (cited supra) characterized this vocation as a *"Noble Profession"*.

It follows thus that, the fact that Mr. Mzuwanda once worked with the judiciary and he has what he calls *"Court Knowledge"* or that he is a student of law at a certificate level, do not by far make him a professional in law as per the definition offered above for purposes of practicing law in this country the way he is doing, and courts in this country have religiously restricted that kind of indefensible practice. In **Julius Petro v. Cosmas Raphael** (cited above) this court admonished the invaders of this profession, by quoting with approval a useful precaution from a book, titled "The Road to Justice (1955) p.24" by **Lord Denning,** an eminent English jurist, who put it this way;

> *"The law is a science which requires long study and experience before a man attains proficiency in it; and the ordinary citizen cannot properly put his arguments before the judge except with the assistance of a trained lawyer".*

In another forum, i. e. **Edwin s/o Festo v. Levina s/o Ifunya, HC Civil Application No. 17 of 2002, at Bukoba**, a Judge of this court lamented and warned against persons who invade this profession the way Mr. Mzuwanda is doing, he said;

> *"I must really register my concern at people who think they are clever, grab cases from other people and prosecute them without any legal basis. They do this at the risk of those cases being declared null and void"*

This court's efforts in discouraging such unqualified legal representation is also evident in the decision of **Hassan Bharde T/A Zahir Trading Company v. The Registered Trustees of Sunni Muslim Jamaat and Mohamed Gulam Huusin Pardhan, HC (Land Division) Land Apppeal No; 40 of 2006, at Dar Es Salaam.**

It is for the above adduced reasons that I promptly answered the main issue and the second sub-issue posed above negatively, to the effect that the reasons adduced by Mr. Mzuwanda for representing the applicants by power of attorney are feign, hence not acceptable for such kind of representation. It is for this reason therefore, that the representation is illegal and prohibited by the law

as demonstrated herein above. I thus deny audience to Mr. Mzuwanda, and he is ordered not to appear and address this court in this matter for want of *locus standi*. The applicants may thus appear in person, or engage an advocate or seek legal aid if they wish. It is so ordered.

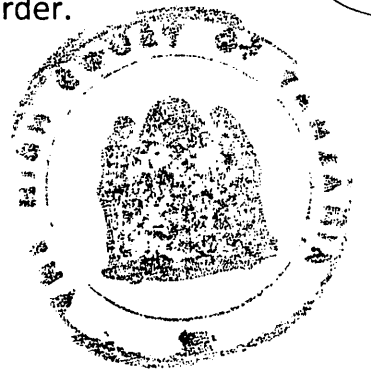
JHK. UTAMWA.
JUDGE
20/04/2011

Date; 20/04/2011

CORAM- HON. Utamwa, J.
Applicants; - Mr. Mzuwanda.
Respondent;- Mr. Marwa advocate.

CC. Mrs. Kaminda.

COURT; Order pronounced in chambers in the presence of Mr. Mzuwanda and Mr. Marwa learned advocate for the respondent. Applicants be however, notified of this order.



JHK. UTAMWA.
JUDGE
20/04/2011