

**IN THE HIGH OF TANZANIA**  
**AT DAR ES SALAAM**  
**CIVIL REVISION NO. 27 OF 2019**

(Originating from Resident Magistrate Court of Dar es salaam at Kisutu  
In Execution No.39 of 2018)

**KELVIN RODNEY ZAMBO ..... APPLICANT**

**VERSUS**

**UAP INSURANCE TANZANIA LTD**

**(FORMERLY KNOWN AS**

**CENTURY INSURANCE COMPANY) .....RESPONDENT**

**RULING**

**MASABO, J.**

The Applicant, Kelvin Rodney Zambo, had filed a chamber application under section 44(1)(b) of the Magistrates Courts Act Cap 11 R.E 2002 praying that this court be pleased to call and revise the ruling and orders of the Resident Magistrate Court of Dar es salaam at Kisutu in Execution No. 39 of 2018. The application is supported by an affidavit sworn by the Applicant in which he deposes that sometimes in 2014 he sued **Century Insurance company Ltd** (1<sup>st</sup> defendant) and **UAP Insurance Tanzania Limited** (2<sup>nd</sup> defendant). That the suit was heard exparte and on 11<sup>th</sup> July 2017 the judgment was delivered in which the 1<sup>st</sup> Defendant, **Century Insurance Company Limited** was found liable and ordered to pay the applicant for breach of an insurance contract. Meanwhile on 1<sup>st</sup> March 2013 the

respondent passed a special resolution to change its name from **Century Insurance Company Limited** to **UAP Century Insurance Company Limited**. The change of name became effective on 3<sup>rd</sup> April 2013. Further, on 6<sup>th</sup> February 2014 once again changed its name from **UAP Century Insurance Company Limited and to UAP Insurance Tanzania Limited, its current name**. On 23<sup>rd</sup> March 2018 the applicant filed an execution proceedings (Execution No. 39 of 2018 in the Resident Magistrate Court of Dar es Salaam at Kisutu) in which he substituted the Respondents old name of **Century Insurance Company Limited** with its new name, **UAP Insurance Tanzania Limited**. The application was struck out on the ground that the application for execution was brought against a wrong party as according to the executing judgment the judgment debtor was UAP Century Insurance Tanzania Ltd and not UAP Insurance Tanzania Ltd.

In his submission in support of the Application, Mr Joseph Kipeche, learned counsel, argued that the execution court erred in striking out the execution on the ground that the execution proceedings was filed against a wrong party because it is undisputed that the Respondent changed its name to a new name of UAP Insurance Limited. He reasoned that the substitution of name is well founded under section 31(1) of the Companies Act No. 12 of 2002 which allows the company to change its name by special resolution. Further, he submitted that according to section 31(4) of the Companies Act a mere change of name by a company does not affect any rights or obligations of the company nor does it render defective any legal

proceedings by or against the company hence the substitution was not erroneous.

On the Respondents part, Mr. Kephass Mayenje, learned counsel sternly objected. He submitted that the action of the Applicant in instituting this application is tantamount to challenging the judgment through the back door in that, the decision of that while striking out the appeal the Mhina, SRM observed the judgement to which execution was sought held that **UAP Insurance company Ltd** was a shareholder of **Century Insurance company Ltd** hence it was not liable. That, if this application is held in the affirmative and the orders thereto granted, it would be tantamount to holding the shareholder liable.

He further submitted that, an application for execution is for enforcement of a decree from the judgment and that in the instant case, the 2<sup>nd</sup> defendant was not held liable in the Judgment dated 11<sup>th</sup> July 2017 hence it can not be made party to the execution proceedings. He reasoned further that since the change of name was not reflected in the judgement and the decree thereto, neither the execution court nor this court can substitute the name of the party.

**Regarding the application of** section 31(1) and (4) of the Companies Act he submitted that the same is irrelevant at the execution stage because the role of the executing court is only to enforce the judgment and Decree which in this case has declared UAP Century Insurance Tanzania Ltd as judgement debtor and therefore, the execution court was right in

striking out the execution proceedings. In rejoinder Mr Kipeche reiterated the argument that section 31 of the 31 (4) of the Companies Act .

I have given due consideration to the rival submission by the parties. The only question for consideration is whether or not the execution court erred in striking out the application.

Before I determine this question, I would like to set out from the outset a few undisputed facts that are clear on the court's record: **First**, it is true as submitted by the Applicant that **Century Insurance Co. Limited** was incorporated on 17<sup>th</sup> July 2008 under certificate No. 66555. On 3<sup>rd</sup> April 2013 it changed its name to **Century Insurance Company Limited** as per certificate of change of Name no. 66555 and on 6<sup>th</sup> February 2014 it once again changed its name to **UAP insurance Tanzania Limited**. Second, that the suit leading to the execution proceedings was instituted in court on 21<sup>st</sup> November 2014, and that the parties against which the suit was instituted was **Century Insurance Company Limited**. Later, on 5<sup>th</sup> February 2015, the Applicant herein with leave of the court granted on 21<sup>st</sup> January 2015, filed an amended plaint impleading **UAP Insurance Tanzania Limited**. In the amended plaint, **UAP Insurance Tanzania Limited** was added as 2<sup>nd</sup> Defendant. In its judgment, the court found the 1<sup>st</sup> defendant liable and decreed that it should pay Tshs 32,000,000 as compensation for comprehensive insurance; Daily payment of Tshs 40,000/ for loss of business; general damage of Tshs 100,000,000/=, an interest of 21% from the date of accident to the date of judgment and from the date of judgment to the date of final settlement, respectively. With respect to

the 2<sup>nd</sup> defendant, **UAP Insurance Tanzania Limited** the court held that it can be held liable as was not party to the insurance contract as it was just a shareholder of the 1<sup>st</sup> Defendant.

Against this background, I now turn to the issue for determination. The question that comes to my mind is what is execution and what is the role of the executor. Roughly, execution can be defined as the enforcement of a decree by a judicial process which enables the decree- holder to realize the fruits of the decree passed by the competent Court in his favour. The power of executing Court is constrained to giving effect to the decree. In other words, an executing Court cannot go behind the decree by questioning its validity or the jurisdiction of the Court which passed it. In an Indian case of **The Lahore Bank, Limited, In Liquidation v. Ghulam Jilani**, (1924) I.L.R. V Lah. 54 it was held that executing Court has no jurisdiction to criticize or go behind the decree, all that concerns it is the execution of it. If the decree should be annulled, that is not the function of the executing Court. The court was addressing the refusal by refusal by the execution court to execute the decree on the ground that the minor had not been represented before the Liquidation Court and therefore no decree existed.

In **V. Ramaswami Ayyangar And Others vs T.N.V. Kailasa Thevar** 1951 AIR 189, the court while commenting on the role of executing judges held that:

"The learned Judges appear to have overlooked the fact that they were sitting only as an executing court and their duty was to give effect to the terms of the decree that was already passed and beyond which they could

not go. It is true that they were to interpret the decree, but under the guise of interpretation they could not make a new decree for the parties.”

In our case, Order 21 rule 10 (2) which regulates the applications for execution states that:

Every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely-

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree

.....

.....

- (i) the name of the person against whom execution of the decree is sought;

Further Rule 15.-(1) the same Order states that:

On receiving an application for the execution of a decree as provided by rule 10, sub-rule (2), the court shall ascertain whether such of the requirements or rules 10 to 12 as may be applicable to the case have been complied with; and, if they have not been complied with, the court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

In my settled opinion, the requirement under Rule 10(2)(i) and the rest of this sub rule are mandatory requirement. It is in this context that Rule 15 provides room for the execution court to grant leave to the applicant to

remedy the omission or any other defects rendering the application non-compliant to sub rule 2. These two provisions, in my considered view, reflect the position stated in the Indian authorities above cited. The executing court can under no circumstances change the title of the suit, the name of the parties or that of the decree debtor. By blessing the substitution of the decree debtor the execution court would have contravened the requirement of the rules and would have surpassed its legal mandate.

I have noted the provision of the Section 31 of the Companies Act and its relevance in continuation of action against companies that abandon their original names to new names. However, with much respect, this is not applicable at the execution stage due to what I have demonstrated above. As correctly held by the first appeal magistrate, the same would have been applicable at the trial stage. I also wish to highlight that, even at the trial stage, the parties are not at liberty to substitute names of parties in the absence of an order of the court (*Inter- Consult Limited v Mrs Nora Kassanda & Mathew Ibrahim Kassanga*, Civil Appeal No. 79 of 2015, Court of Appeal of Tanzania at Dar es Salaam (unreported)). Thus, even if I were to hold that section 31 was applicable, the application would still fail as the substitution was done in the absence of the order of the court.

The facts on record would reveal that the Applicant herein has no person, other than himself to blame. As articulated in his affidavit and the attachment thereto, the respondent abandoned the name of **Century Insurance Company Limited** to **UAP Century Insurance Company**

**Limited** on 3<sup>rd</sup> April 2013 and on 6<sup>th</sup> February 2014 it adopted the new name of UAP Insurance Tanzania Limited. The suit leading to the execution proceedings was on 21<sup>st</sup> November 2014, which was about one year and six months after the respondent abandoned its original name of **Century Insurance Company Limited** and about seven months after it adopted what is now termed as a new name.

From what I have endeavored to demonstrate above, I have found the application devoid of merit and I proceed to dismiss it with costs.

Order accordingly.

DATED at DAR ES SALAAM this 5<sup>th</sup> day of December 2019.



**J.L. MASABO**

**JUDGE**

Ruling delivered this 5<sup>th</sup> day of December 2019 in the presence of Ms. Mariam Mtalitina for the Applicant and Ms. Victoria Gregory advocate for the Respondent



**J.L. MASABO**

**JUDGE**