

IN THE HIGH COURT OF TANZANIA
AT TANGA
MISCELLANEOUS CIVIL CAUSE NO. 2 OF 2018

BETWEEN

RASHIDI JUMBE HANZA1ST APPLICANT
FATUMA MAINE HAMZA2ND APPLICANT
HALIMA JUMA MBWANA 3RD APPLICANT

AND

MAGDALENA HAMISI SKAYA1ST RESPONDENT
PROFESSOR IBAHIM HARUNA LIPUMBA2ND RESPONDENT
MASHAKA NGOLE3RD RESPONDENT
TANGA CITY COUNCIL.....4TH RESPONDENT
EXECUTIVE DIRECTOR TANGA CITY COUNCIL ...5TH RESPONDENT
THE HONOURBLE ATTORNEYS GENERAL6TH RESPONDENT

RULING

MRUMA,J:

The Petitioners Rashid Jumbe Hamza, Fatuma Maine Hamza and Halima Juma Mbwana were councilors in the Tanga City Council on the tickets of the Civic United Front (CUF. Sometimes on 8th July 2018 they

received letters from their party – the Civic United Front (CUF) to the effect that their memberships in the said party have been stripped off from the date of that letter. That letter was copied to the city council, the Executive Director of the council and the Director of the National Electoral Commission.

Following their expulsion, the petitioners filed Miscellaneous Cause No.2 of 2018 to challenge their party's leaderships to strip them of their membership. The Respondents are one Magdalena Hamis Sakayo, Professor Ibrahim Haruna Lipumba, Mashaka Ngole, (who were sued in their names and person capacities as there were allegations that they were not leaders of the Civic United Front), the Tanga City Council the Executive Director of Tanga City Council and the Honourable Attorney General.

The 4th and 5th Respondents i.e. the Tanga City Council and its Executive Director were joined on the account that they had planned to notify the National Electoral Commission (NEC) on the Applicants' expulsion from the Civic United Front (CUF) party so that the Commission could hold a by election on the ground that the Applicants have lost their seats as councilors.

The 6th Respondent the honourable the Attorney General was joined as a necessary party following the citing of the 4th and 5th Respondents who are Government Authorities.

By a deed of settlement filed in this court on 19th February, 2020, the Applicants and the 1st, 2nd and 3rd Respondents have agreed to settle their disputes on the following terms:

1. That the 1st, 2nd and 3rd Respondents retract and withdraw the letter dated 8th July 2018 (and its contents) which is the subject of this application and reinstate the Applicants in their membership status at the Civic United Front.
2. That upon the Applicants being reinstated in their original membership's position/status in CUF, they shall retain and restore their rights and privileges acquired by them being members of the CUF and as guaranteed by the constitution of CUF or any other applicable laws including restoring back their councillorship.
3. That the Applicants and 1st, - 3rd Respondents have agreed that the 4th, 5th and 6th Respondents shall be notified of the retraction of the said letter by the 1st, 2nd and 3rd Respondents or by CUF within the period of five (5) days from the date of recording of the deed of settlement, and that once recorded the deed shall have legal effect as a court order.

When given an opportunity to comment on the deed of settlement Ms. Rebecca Msalangi learned State Attorney who together with Mr. Danda and Mr. Issac Temu represented the 4th, 5th and 6th Respondents, objected to the recording of the deed of settlement on the following grounds:

- (a) That the 4th to 6th respondents were not parties to the said deed of settlement.
- (b) That upon being stripped off their CUF memberships a letter to that effect was copied to the Electoral Commission which in turn declared all councilor seats previous held by the Applicants as being vacant pursuant to the provisions of section 3(1) of the Local Governments Elections Act. Thus, if the deed of settlement is recorded as a decree of this court it will have the effect of restoring the to their positions as councilors to the detriment of the 4th and 5th Respondents who will have to incur costs in paying their rights while they are no longer councilors having been absent without notice in three consecutive council meetings/sessions.

Responding to the learned State Attorney is concerns the 1st Applicant Rashidi Jumbe Hamza contended that the deed of settlement is between the Applicants and their party – the Civic United Front (CUF) and the kernel of the deed is restoration of their memberships. He said that the issue of their councillorship has been prematurely raised because there processes which will have to be followed before they are reinstated to their councillorship positions.

Regarding the argument that their seats have been declared vacant, Mr. Rashid contended that, that cannot be true because no by-election had been held since they were declared not to be members of the Civic United Front (CUF). He said that the 4th and 5th Respondents should not get

worried of paying them their entitlements because any entitlement shall be paid according the existing laws as they are statutory rights.

I have carefully gone through the submissions of the parties and the pleadings on the record. From these pleadings and the submissions two issues have to be answered by this court at this stage. The first issue is whether the 4th, 5th and 6th Respondents who were joined in these proceedings as necessary parties can object to the settlement as between the interested parties and the second issue is whether the deed of settlement has the effect of restoring the Applicant to their councilor's positions.

Starting with the 1st issue, as correctly submitted by the first applicant, the kernel of the present proceedings is the expulsion of the Applicants from the Civic United Front (CUF). The arguments of the Applicant's application were that they were expelled from their party un-procedurally and against their parties constitution. They were challenging their removal from the party's membership. Nowhere did they claim or challenge their removal (if any) from their positions as councilors. Thus, if they were removed and their seats declared vacant that is not before this court is there proceedings. At this moment this court is called to investigate the legality of their expulsion from CUF and not the consequences of their removal from the party.

As stated hereinbefore, they were challenging the acts of the 1st, 2nd, and 3rd Respondents to expel them from CUF. For sure those were the internal affairs of the Civil United Front. If persons who were quarreling

have agreed to settle their differences no one including this court can stop them from so settling.

The learned State Attorney has argued this court to refuse to record the settlement and order the parties to proceed with the hearing of the case. That argument has taxed my mind a lot. I have asked myself what will be the issue if this court forces the Applicants to proceed with the matter on merits? I have so asked myself because from the pleadings of the parties the Applicants had only one issue with the 1st, 2nd and 3rd Respondents, and the issue was about the legality of their (1st, 2nd and 3rd) Respondents' act of expelling them from the party. The 4th and 5th Respondents were joined simply on the account that the expulsion letters dated 5th July 2018 were copied to them. Probably they were joined as an alert that they should not take action relying on that letter because the contents of that letters were being challenged in a court of law. There was no prayer to stop the 4th and 5th Respondents from acting on the letters, thus it is apparent that they were simply joined as necessary parties.

As there was no cause of action and direct remedy laid against the 4th and 5th Respondents they cannot be heard objecting the deed of settlement on account that they were not par to it. Actually they were not parties to it and I do not find that it will prejudicially affect them. If the Applicant's membership in the Civic United Front (CUF) or their positions are reinstated those are CUF's internal affairs and the 4TH – 6TH Respondents will not be affected anyhow.

Secondly, as regards to restoring them back to their position of councilors, that is not a matter before this court as of now. That is a legal issue which will be determined when it is appropriate to do so but for sure not in these proceedings. The issue before this court was whether or not the expulsion of the Applicants from CUF by the 1st, 2nd and 3rd Respondents was proper and in accordance with the party's laid down procedures or not and because the parties (i.e. the Applicants and the 1st – 3rd Respondents) have agreed to settle and one of the terms of their settlement is to reinstate the Applicants and retract and withdraw the 8th July 2018 letter, this court has no reason against endorsing the parties lawfully agreement.

The Civic United Front has the right to retract and withdraw its communication to any person at any time. Whether the retraction and/or withdraw will be accepted and acted upon by those who are concerned is not an issue before this court at the moment.

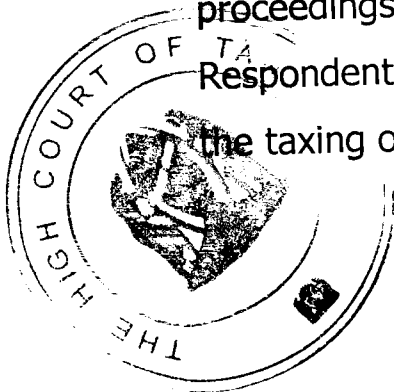
Regarding the second issue which is whether the deed of settlement will have the effect of automatically restoring the Applicants to the councillorship seats, as correctly submitted and reflected in the parties submissions and pleadings the issue of councilor seats was not among the issue which was raised by the parties. There was only one issue in this matter, and that is whether the expulsion of the Applicants from Civic United Front was lawfully and according to the laid down procedures. Thus, arguing that if a deed of settlement is recorded it will have the effect of reinstating the Applicant to their councillorship seats is misconceived.

Moreover, his deed of settlement is between the Applicants on the one hand and the Civic United Front leadership on the other hand. In electoral laws it is not a political party that may reinstate a councilor to his/her position. There are legal processes which have been complied with before one is reinstated to his councillorship position. Upon re-acquiring their membership in the party, the Applicant will have to follow the appropriate laid down rules of procedure would they wish to regain their respective seats in the event they are still vacant.

That said I dismiss the objection raised and order that:

ORDER:

1. The Deed of settlement as between the Applicants and the 1st, 2nd and 3rd Respondents is hereby adopted as a decree of this court binding the parties thereto.
2. As the 4th, 5th and 6th Respondents were dragged into the proceedings because of the Applicants and the 1st, 2nd and 3rd Respondents feud, they will have their costs which shall be taxed by the taxing officer/master.




A.R. Mruma

Judge

Dated at TANGA this 20th day of February, 2020