

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY  
AT MOSHI**

**MISCELLANEOUS CIVIL APPLICATION NO. 32 OF 2019**

**MARY SIRIL CHUWA** (As Administratrix of the  
Estate of the late Sirili Tilito Chuwa) ..... **1<sup>ST</sup> APPLICANT**  
**BAZILI RAUYA** ..... **2<sup>ND</sup> APPLICANT**  
**PANTALEO WAWAYA** ..... **3<sup>RD</sup> APPLICANT**  
**PATRISI PANTALEO** ..... **4<sup>TH</sup> APPLICANT**  
**HIPOLITI MAKOI** ..... **5<sup>TH</sup> APPLICANT**  
**EVAREST T. MUSHI** ..... **6<sup>TH</sup> APPLICANT**  
**VICENT S. CHUWA** ..... **7<sup>TH</sup> APPLICANT**  
**RONARD RAUYA** ..... **8<sup>TH</sup> APPLICANT**

**VERSUS**

**THE MINISTRY FOR CONSITUTIONAL  
AND LEGAL AFFAIRS** ..... **1<sup>ST</sup> RESPONDENT**  
**THE ATTORNEY GENERAL** ..... **2<sup>ND</sup> RESPONDENT**

*18<sup>th</sup> June, 2020 & 14<sup>th</sup> August, 2020*

**RULING**

**MKAPA, J:**

This is an application for extension of time to apply for leave to file application for Prerogative orders in respect of the Order for Extension of Period of Limitation granted by the then Minister for Constitutional and legal Affairs (Hon. Dr. Harrison



Mwakyembe) on 18<sup>th</sup> November, 2016 to Uru Shimbwe Rural Primary Cooperative Society against the applicants. The application is brought under section **14 (1) of the Law of Limitation Act**, Cap 89 R.E 2002, **section 2 (1) of the Judicature and Application of Laws Act**, Cap 358, R.E. 2002, **section 95 of the Civil Procedure Code**, Cap 33 R.E. 2002 and **Rule 17 of the Law Reform (Fatal Accidents and Miscellaneous Provision) Judicial Review and procedure and fees) Rules**, 2014 (GN No. 324 of 2014).

The application is supported by applicants' joint affidavit which respondent through Ms. Selina Kapange learned State Attorney disputed and raised a preliminary objection on point of law to the effect that;

**1. The application is bad in law for non- joinder of Uru Shimbwe Rural Primary Co-operative Society Limited.**

Both parties consented and the court ordered the objection be heard by way of filing written submissions. The applicants were jointly represented by Ms. Anna Lugendo learned Advocate while the respondents were represented by Mr. Yona Marco learned State Attorney.

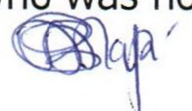
Arguing in support of the preliminary objection, Mr. Marco submitted that non-joinder of Uru Shimbwe Rural Primary Co-

operative Society Limited (hereinafter referred to as Uru Shimbwe) in this application amounts to a substantial miscarriage of justice. That, the impugned order which granted extension of time dated 18<sup>th</sup> November, 2016 as per applicant's pleadings was issued to Uru Shimbwe by the then Minister of Constitutional and Legal Affairs Hon. Dr. Harrison Mwakyembe.

Mr. Marco explained further that, Uru Shimbwe invoked the said order to institute **Land Case No. 33 of 2016** against the applicants which is pending at this court to date. It was Mr. Marco's view that Uru Shimbwe has direct interest in the impugned order than other parties to this application.

Mr. Marco submitted further that, since the applicant seeks to challenge the impugned order, Uru Shimbwe has to be joined as co-applicant in the present application and accorded right to be heard. To support this argument Mr. Marco cited the decision in the case of **Tundu Antiphas Mungwai Lissu V the Hon. Speaker of the National Assembly and Another**, Misc. Civil Cause No. 18 of 2019, HC at DSM, where this court rejected grant of application for reasons among others the fact that the decision would have directly affect a party who was not a party to the application, namely Mr. Mtaturu.


It was Mr. Marco's further argument that joining Uru Shimbwe at the subsequent application would bear a party who was not a



party to the former application as such the same shall offend the principle that parties are bound by their own pleadings. He finally prayed that the preliminary objection be sustained and the application be dismissed with cost.

In reply, Ms Lugendo disputed the objection and submitted that, the objection has no legal justification hence devoid of merits. She went on arguing that, the review intends to challenge the administrative decision of the Minister brought under Rule 17 of the Law Reform Rules and not a private litigation. Ms. Lugendo cited the book by C.K Takwani, **Lectures on Administrative Law**, 3<sup>rd</sup> Edn in which page 239 illustrates the limitation of judicial review for the executive to administer the law and the judiciary to ensure that the Government undertakes its administrative functions in accordance with the Constitution.

Furthering her argument, Ms. Lugendo contended that, there is no law that compels the applicant to join Uru Shimbwe in this application or at leave stage since it is the applicants who claimed violation of their rights by an administrative decision and further that the case of Tundu Lisu (supra) is not relevant as the contentious matters therein are distinguishable from the present application. She finally prayed the preliminary objection raised be dismissed with costs.



Having considered both parties arguments for and against the objection raised, I think the only question for consideration is whether non-joinder of Uru Shimbwe is incurably fatal.

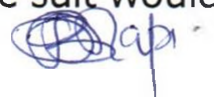
**Order 1 Rule 3 of the Civil Procedure Code, R.E. 2019** provides that;

*"All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative where, if separate suits were brought against such persons, any common question of law or fact would arise."*

The term "necessary party" is defined in the **Black's Law Dictionary, 8<sup>th</sup> Edition** to mean;

*"a party who, being closely connected to a lawsuit should be included in the case if feasible, but whose absence will not require dismissal of the proceedings."*

As rightly submitted by the applicants, the Court cannot compelled them to sue a party they did not wish to sue, however, I am in agreement with the respondents on the fact that it is logically unfounded and the final determination of the suit would






not be maintainable without Uru Shimbwe being joined as a necessary party to the suit. I say so because it is beyond my imagination as to how can the application be determined in the absence of Uru Shimbwe while the impugned order was issued directly to them and they have already acted upon it.

Since it is the same order that the applicants sought to challenge in the judicial review, no doubt it shall prejudice Uru Shimbwe if they will not be joined as party, and in the event the application is granted for or against, it would have direct impact on both the former and the latter.

Therefore, for an effectual disposal of the real controversy involving the impugned order which is the cause of action for judicial review if leave is to be granted, issues arising therefrom must be tried jointly. Faced with the similar situation in the case of **Stanslaus Kalokola V Tanzania Building Agency & Another**, Civil Appeal No.45 of 2018) [2019] TZCA 412 (unreported) the Court of Appeal had this to say;


*"Our decision on this point is that there are non-joinders that may render a suit unmaintainable and those that do not affect the substance of the matter, therefore inconsequential. Commenting on this aspect, Mulla, **Code of Civil Procedure**, 13th Edition, Volume I pg. 620 writes;*



*"As regards non-joinder of parties, a distinction has been drawn between non-joinder of a person who ought to have been joined as a party and the non-joinder of a person whose joinder is only a matter of convenience or expediency. This is because O. 1 r. 9 is a rule of procedure which does not affect the substantive law. If the decree cannot be effective without the absent parties, the suit is liable to be dismissed."*

At page 17 the Court stated further;

*"... With that, it is our conclusion that the learned High Court Judge was correct in finding the non-joinder in this case fatal. This in our view, is the category of non-joinder which, according to Mulla's Commentary, may render the decree ineffective."*

See also, **Farida Mbaraka and Farid Ahmed Mbaraka V Domina Kagaruki**, Civil Appeal, No. 136 of 2006 (unreported) where Court of Appeal remitted the suit to the High Court with directions that hearing should proceed after joining the necessary party. The Court observed that the plaintiff could not be compelled to sue a party she did not wish to sue, but still the determination of the suit would not be effective without such party being joined as necessary party. 

In the circumstances, I sustain the preliminary objection raised and struck out this application with no orders as to costs. I further order the applicants to join the necessary party that is Uru Shimbwe Rural Primary Co-operative Society Limited.

It is so ordered.

Dated and delivered in Moshi this 14<sup>th</sup> day of August, 2020.



  
**S.B. MKAPA**  
**JUDGE**  
**14/08/2020**