

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. CIVIL APPLICATION NO. 29 OF 2020

CHARLES ZENGO.....APPLICANT

VERSUS

- 1. SAID JUMA**
- 2. SARAH MAYALA**
- 3. BERTHA KULWA**
- 4. NGIDI JOSEPH**
- 5. MATHIAS MABULA**
- 6. EMMANUEL LUPONDEJA**
- 7. SAMSON AMOSI**
- 8. PERPETUA GERALD**
- 9. LOYCE DOGAN**

.....RESPONDENTS

RULING

24th November, 2020

Mdemu, J.;

This application under the certificate of urgency intending this court to issue temporary injunctions to the Respondents pending determination of civil appeal No. 6/2020 lodged in this court. Shortly, I dismissed the said appeal, that is, appeal No. 11/2020 for being time barred.

The Applicant addressed this court that, his advocate one Frank Samwel is on safari to Bukoba. He thus prayed for adjournment for two reasons: **one**, that the said Advocate has all the requisite documents and two, he stated in the dismissed appeal that the advocate is the one who knows why the appeal is out time.

All the Respondents insisted that, the Applicant should proceed to prosecute the application as they are tired of attending court sessions for no reason at all. As this is a farming season, they thought the matter be

dismissed with costs so that they spent their precious time in agricultural activities. They also prayed the Applicant to reimburse their fare (transport costs).

As I alluded above, the Applicant lodged this application under certificate of urgency. The way he is treating this application by seeking adjournments for pretency that his advocate be around, has rendered this application to loose the status of being an urgent one.

Equally, as the appeal subject of this application has been dismissed, this application wont survive any way. It was for the granting of an interim order pending hearing and determination of appeal No. 11 of 2020 which is no longer existing.


Again, even under existence of the said appeal, the same is in respect of Charles Zengo vs. Said Juma. Other eight Respondents are not a party to the dismissed appeal. The Applicant, in the circumstances of this application, and the appeal just dismissed, cannot seek a temporary injuction to persons who are not subject of the appeal, and they have never been a part to any suit in the Primary Court of Nindo, in Civil case No. 23/2018.

In that stance, presence of the advocate cannot make the 2nd, 3rd, 4th, 5th, 7th, 8th, and 9th Respondents a party to the dismissed Civil appeal No. 11/2020, neither can he make the said Respondents a part to civil case No. 23/2018.

Of essence, parhaps is the fact that, the Applicant did not inform this court if he transmitted the notice of hearing of this application and the dismissed appeal to the said Advocate for the 2nd time now. Infact, even the advocate knows well procedures to follow in case of absence. What is conceived to this court is that, the Applicant is engaging himself in a delay

tactic which cannot be accommodated by this court. In either case, this application, as alluded, wont stand in **two** ways; **one** that, the appeal subject to this application is not existing and two even where it does exist, the Respondent were not a part to that appeal, save for the 1st Respondent.

Having said all, this application is hereby struck out with costs. It is so ordered.


Gerson J. Mdemu
JUDGE
24/11/2020

DATED at SHINYANGA this 24th day of November, 2020.



Gerson J. Mdemu
JUDGE
24/11/2020