

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

(LAND DIVISION)

AT KIGOMA

APPELLATE JURISDICTION

MISC. LAND APPLICATION NO. 53 OF 2020

(Arising from the High Court of Tanzania at Tabora Misc. Land Application No. 72 of 2018, Originating from Kigoma District Land and Housing Tribunal Land Application No. 43 of 2009).

1. DAUDI BUJENJEDELI

2. KOBALI MLONGO

3. KANUBU LEKEGWA

}**APPLICANTS**

VERSUS

VILLAGE COUNCIL OF MNANILA VILLAGE.....RESPONDENT

RULING

17th Dec.2020 & 11th Feb.2021

A. MATUMA, J

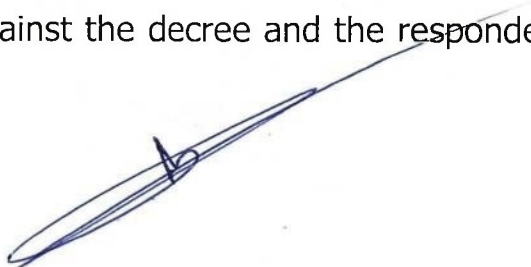
The Applicants (in fact not real but someone camouflaging in their names) are seeking extension of time within which to appeal in this Court against the judgment and decree of the District Land and Housing Tribunal for Kigoma in Land Application No. 43 of 2009.

When this matter was tabled before me, I recalled to have worked on the issue bearing the same parties. Mr. Ignatius R. Kagashe learned advocate who represented the Applicants also revealed in the chamber summons and affidavit that the same parties had previously appeared before me when the Registry of this Court was still at Tabora vide Misc. Land Application No. 72 of 2018 seeking the same reliefs/prayers.

In that application, I granted the Applicants forty-five days within which to file their intended appeal. The forty-five days expired on the 16th May, 2019. They did not however lodge any appeal until on 23rd October, 2020 almost 17 months when they lodged the instant application explaining why they failed to meet the deadline of the days extended and asking for re-extension.

When the matter was yet to be heard, the Deputy Registrar received a complaint letter jointly written by Elisia Janson Mahanga and Richard Kasogota Kibili to the effect that the Applicants in this matter are not real.

In the letter of complaints, they explained that at one time, the three Applicants successfully sued the respondent for compensation. That both parties did not appeal against the decree and the respondent started to compensate them.

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That Kobali Mlondo the husband of Elisia (the complainant) before he could process fully his compensation got sick and his representatives (the herein complainants) took over but the respondent informed them that she could not finalize the compensation because there is a pending matter in Court against her. In their follow up of the matter they realized that someone has purported to be the Applicants and lodged the instant application and even the application previously made in this court at Tabora which has been a bar to their compensation.

Due to that complaints which was brought to my attention by the Deputy Registrar, I addressed the parties on it and required explanation from them.

Mr. Ignatius R. Kagashe learned advocate who drew the documents for the applicants admitted and or confessed that he did not know the applicants nor he has met them but drew the documents of this application under the instructions of one Julia Leonard who is allegedly administratrix of the estate of Kobali Mlondo the 2nd Applicant.

On the other hand, the said Kobali Mlondo is said to be alive but seriously sick according to the complaint letter.

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Be it Kobali Mlongo is dead or alive, the issue is; whether the applicants herein are real and whether they are aware of this matter which is pending in their respective names.

As I have said herein above advocate Kagashe admitted to have not been instructed by the 1st and 3rd respondents anyhow. He thus intended to withdraw them from this application and remain with the 2nd applicant by substituting his name into that of the administratrix Julia Leonard.

He explained that he decided to join the 1st and 3rd Applicants as co-applicants with the 2nd applicant because initially they were fighting together in the original suit.

Without much ado, it was absolutely wrong to bring the 1st and 3rd applicants in the instant application as applicants without their knowledge and or consent. It is very dangerous in the administration of justice in case an adverse order is issued against them.

In the case of **Madushi Nzuki versus Dunia John**, Criminal Appeal No. 7 Of 2020, High Court at Kigoma, I faced the similar problem. Madushi Nzuki was charged in the Primary Court of Uvinza for **"WIZI WA MIFUGO"** but at the end of the trial he was acquitted. Dunia John who was the complainant, did not appeal. One **Chama** a third party went into

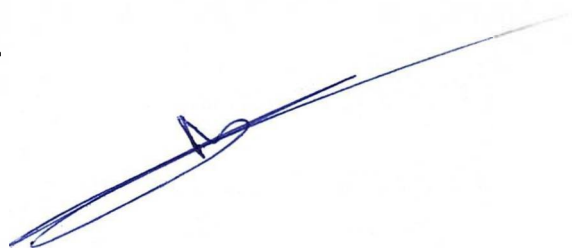
the advocate's chamber and instructed the advocate to appeal against the acquittal.

Acting on such instruction of a third party, the advocate lodged an appeal in the District Court using the name of Dunia John as an Appellant who in fact did not instruct him nor had complained of the acquittal. The appeal was heard and finally Madushi Nzuki was found guilty. His previous acquittal was substituted with a conviction. He was sentenced to serve five years in jail.

Aggrieved he appealed to this Court and it is when the problem arose as Dunia John was nowhere to be seen for service of the petition of Appeal to him.

I ordered the advocate who represented him at the District Court to appear before me and explain the mode in which he was communicating with him so that he could be traced and served. The learned advocate revealed that he did not know him nor had met him as he acted on the instructions of one Chama.

In the circumstances, I was necessitated to exercise my Revisional Powers to remedy the situation.



With this example, it is very dangerous for advocates to act on instructions of third parties to a suit or case without knowledge and consent of the real parties. Parties to the suit or case have to abide with the outcome of the matter. Nobody should be made as an applicant or plaintiff unless himself or his recognized agent so desires.

This application therefore, in respect of the 1st and 3rd applicants was improperly brought by a stranger or third party camouflaging herself into the names of such "applicants". It is thus incompetent and deserve to be struck out.

In respect of the 2nd applicant, as I have said, one Julia Leonard is alleging to be his administratrix and it is her who instructed advocate Kagashe to prepare the instant application.

On the other hand, according to the complaint letter herein referred, the 2nd applicant is still alive although seriously sick.

Whether or not, the 2nd applicant is alive, this application is still defective in his respect. This is because, if he is still alive, his consent was not sought and obtained as the learned advocate Mr. Kagashe conceded that it was Julia Leonard who instructed him and not the 2nd applicant in person.

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In that respect the application would suffer the same consequences to that of the other "applicants".

And, if the 2nd applicant is really dead and one Julia Leonard is his administratrix of his estate, this application does not so reflect.

It rather stands as if the 2nd applicant is standing in person on this matter.

Even though, I have come across with one document in the case file reflecting that Julia Leonard was appointed in Probate Cause No. 5/2019 at Manyovu Primary Court to administer the estate of one Leonard Kobali Mlondo.

The current 2nd applicant is Kobali Mlongo. The two are different people in law and no legal document has been filed to reconcile the anomaly. Leonard Kobali Mlongo if is to be related to Kobali Mlongo, he is the son and Kobali is the father. In that respect, this application is still wanting and I accordingly struck it out. No orders as to costs.

It is so ordered.



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A. Matuma

Judge

11/2/2021

Court; Ruling delivered in chambers in the presence of advocate Kagashe for the Applicants and Khalifa Bwangalo solicitor of the Respondent this 11th day of February, 2021.

Sgd: A. Matuma

Judge

11/2/2021