IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

Misc. LAND CASE APPLICATION No. 17 OF 2019

(Arising from the District Land and Housing Tribunal for Ngara at Ngara in Application No. 6 of 2016)

ELISHA EZRON MISIGARO ---------- APPLICANT

Versus

MUKALEHE VILLAGE COUNCIL ---------- RESPONDENT

RULING

02/03/2021 & 08/03/2021

Mtulya, J.:

The present Application was filed in **Misc. Land Case Application Register** by learned counsel Mr. A.K. Chamani (Mr. Chamani) under the instruction of Mr. Elisha Ezron Misigaro (the Applicant) on 14th March 2019 seeking for enlargement of time to file an appeal out of time. The Application was drafted in Chamber Summons supported by the Applicant's Affidavit. The law which was cited by Mr. Chamani to move the court is depicted at the title of the Chamber Summons in the following words: *made under section 41 (2) of the Land Disputes Courts Act, Cap. 216 R.E. 2002 as amended by Act No. 2 of 2016.*

This citation of the law irritated Mr. Job John Mrema (Mr. Mrema), learned solicitor of Ngara District Council who appeared for

Mukalehe Village Council (the Respondent) hence registered a point of preliminary objection (the objection) stating that: *the Application is defective and bad in law for want of proper citation.*

The objection was scheduled for hearing on 2nd March 2021. After a lengthy submission of Mr. Mrema, what was displayed is that the law in early 2019 was revised and now cited as: **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act). According to the opinion of Mr. Mrema, Mr. Chamani cited wrong law to move the court hence the Application cannot stand in court of law. In substantiating his argument, Mr. Mrema cited the precedent of the Court of Appeal in **Edward Bachwa & Three Others v. The Attorney General & Another**, Civil Application No. 128 of 2006 delivered on 23th July 2007.

This line of thinking was protested by Mr. Chamani who stated that the raised objection has been overtaken by event by the principle of overriding objective (the principle) which was enacted in 2018 via the **Written Laws (Miscellaneous Amendment) Act No. 3 of 2018** and decisions of this court in **Alliance One Tobbaco Tanzania Limited & Another v. Mwajuma Hamisi & Another**, Misc. Civil Application No. 803 of 2018 and Court of Appeal in **Samwel Munsiro v. Chacha Mwikwabe**, Civil Application No. 539/08 of 2019. According to Mr. Chamani, the

principle was enacted to avoid unnecessary technicalities in court and the two cited precedents are to the effect that wrong citation of the law is not an issue to bar grant of an order sought provided the court has jurisdiction to grant it. Mr. Chamani further cited section 41 (2) of the Act which gives jurisdiction to this court to grant the order sought and prayed this court to invite its jurisdiction to grant the order. With the precedent in **Edward Bachwa & Three Others v. The Attorney General & Another** (supra), Mr. Chamani contended that it is distinguishable as it was rendered down in 2007 before enactment of the principle.

In a brief rejoinder, Mr. Mrema submitted that the decision in **Alliance One Tobbaco Tanzania Limited & Another v. Mwajuma Hamisi & Another** (supra) does not bind this court as it emanated from the decision of the same court and that principle has no any effect on the precedent **Edward Bachwa & Three Others v. The Attorney General & Another** (supra) and in any case the precedent in **Samwel Munsiro v. Chacha Mwikwabe** (supra) did not overrule the precedent in **Edward Bachwa & Three Others v. The Attorney General & Another** (supra).

According to the opinion of Mr. Mrema, the precedent in **Edward Bachwa & Three Others v. The Attorney General & Another** remains

on record as a good law and may be followed by the lower courts. Finally, Mr. Mrema submitted that negligence on part of learned counsels cannot be an excuse in court of law and must be accountable for their wrong actions.

On my part, I think, for straight forward disputes like the present one, this court cannot be detained. Both learned friends are in agreement that there are two distinct statements of our superior court with regard to wrong citation of the law. They are also in agreement that in 2018 there was an insertion of the principle in our **Civil Procedure Code** [Cap. 33 R.E 2019]. Their disagreement is on which decision this court will base its decision and determine the raised objection.

For easy understanding of the dispute in this objection, I will quote specific statements displayed in the two decisions. Page 7 in the precedent of **Edward Bachwa & Three Others v. The Attorney General & Another** (supra) shows that:

> *...wrong citation of the law, section, subsections, and/or paragraphs of the law or non-citation of the law will not move the Court to do what it is asked and renders the application incompetent.*

Whereas page 5 of the precedent in **Samwel Munsiro v. Chacha Mwikwabe** (supra), the same Court stated that:

> *...where an application omits to cite any specific provision of the law or cites wrong provision, but the jurisdiction to grant the order sought exists, the irregularity or omission can be ignored and the court may order that correct law be inserted.*

Mr. Mrema contention is that the decision in **Edward Bachwa & Three Others v. The Attorney General & Another** (supra) is still a good law as it was not discussed or overruled by the decision in **Samwel Munsiro v. Chacha Mwikwabe** (supra) whereas Mr. Chamani thinks that the decision of **Samwel Munsiro v. Chacha Mwikwabe** (supra) was rendered down after enactment of the principle and therefore this court may opt the recent precedent of our superior court.

I will not dwell much on this subject, as I stated earlier. There is already in place a Court of Appeal decision on the subject. Our judicial practice has been that the most recent decision of the Court of Appeal overrides the previous one (see: **Harcopar (O.M.) S.A v. Harbert Marwa and Family & Three Others**, Civil Application No. 94 of 2013;

Elikana Kafero v. Republic, Criminal Appeal No. 56 of 2017 and **Republic v. Samson Lameck**, Criminal Session Case No. 51 of 2016).

In the present dispute, the cited practice of our superior court is again backed by the enactment of the principle. I understand when there is new enactments, especially like the present one, its appreciation may take sometimes to cement in our learned counsels. To my opinion, I think, the principle was enacted to facilitate substantive justice by avoiding unnecessary techniques as per requirement in article 107A (2) (e) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002].

There is currently an unbroken chain of precedents of our superior court interpreting the principle to give effect to substantive justice (see: **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017; **Gasper Peter v. Mtwara Urban Water Supply Authority (MTUWASA)**, Civil Appeal No. 35 of 2017; **Mandorosi Village Council & Others v. Tuzama Breweries Limited & others**, Civil Appeal No. 66 of 2017; and **Njoka Enterprises Limited v. Blue Rock Limited and Another**, Civil Appeal No. 69 of 2017; **Sanyou Services Station Ltd v. BP Tanzania LTD (Now PUMA Energy (T) Ltd)**, Civil Application No.

185/17 of 2018; and **Attorney General v. Reverend Christopher Mtikila**, Civil Appeal No. 20 of 2007).

I understand Mr. Mrema resisted the precedent of this court in **Alliance One Tobbaco Tanzania Limited & Another v. Mwajuma Hamisi & Another** (supra) arguing that it is a persuasive precedent that does not bind this court as it emanated from the same court. Mr. Mrema is totally correct. However, this court cannot depart from its previous decisions, unless there are good reasons to do so. For the sake of certainty and confidence in judicial decisions, this court will not depart from its decision in **Alliance One Tobbaco Tanzania Limited & Another v. Mwajuma Hamisi & Another** (supra). Considering insertion of section 3A in the Code, the wording of the decision at page 3 is quietly important:

> *It is current law of the land that courts should uphold the overriding objective principle and disregard minor irregularities and unnecessary technicalities so as to abide with the need to achieve substantive justice...the afore wrong citation of the law cannot in anyhow affect the jurisdiction of this honourable court to grant the orders sought...upholding the raised preliminary*

objection is a punishment to the client for the mistake done by its counsel...will cause wastage of time and resources to both litigants and the court, multiplication of unnecessary cases and overburdening litigants with unnecessary costs...it will not solve dispute of the parties...indeed the court will be used as a vehicle of miscarriage of justice at the expenses of legal technicalities...

Having quoted the above paragraph from the precedent of this court, enactment of section 3A of the Code and practice of our superior court cited in this Ruling, I do not need to add anything. However, I understand there is a precedent of this court stating that jurisdiction to grant orders in any application is not conferred by the chamber summons but by the law, and this being a court of law, is presumed to know the law (see: **Dangote Cement Limited v. NSK Oil and Gas Limited**, Misc. Commercial Application No. 8 of 2020).

I think, on my part, I do not need to go further explaining the aim of the principle and duties of learned counsels to uphold the principle as is enacted in section 3B of the Code. In conclusion, the raised objection is hereby overruled. The Applicant is granted leave to rectify the title in

the Chamber Summons in handwriting to comply with the new enactment in Law Revision 2019. The application to proceed for hearing on merit of the Application

It is so ordered.

F.H. Mtulya

Judge

08.03.2021

This Ruling was delivered in chambers under the seal of this court in the presence of Mr. Job John Mrema for the Respondent and in the presence of Mr. A. M. Chamani for the Respondent.

F.H. Mtulya

Judge

08.03.2021