

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

Misc. LAND APPLICATION No. 95 OF 2020

(Arising from the High Court (Bukoba District Registry) in Civil Appeal No. 6 of 2018 and Original from the Resident Magistrates' Court of Bukoba at Bukoba in Civil Case No. 45 of 2016)

JOHNBOSCO RWABUTITI ----- APPLICANT

Versus

SABITI KAINAMULA ----- RESPONDENT

RULING

17/03/2021 & 29/03/2021

Mtulya, J.:

This is an application for leave to prefer an appeal before the Court of Appeal of Tanzania (the Application) to contest the decision of this court in **Civil Appeal No. 6 of 2018**. The Application was preferred by learned counsel Mr. Joseph Bitakwate under section 5 (1) of the **Appellate Jurisdiction Act** [Cap. 141 R.E. 2019] and Rule 45 (a) of the **Court of Appeal Rules, 2019**.

However, before the Application was set for hearing, Mr. Gerasi Reuben, learned counsel for the Respondent registered a point of preliminary objection contending that the Application is incompetent and bad in law for improperly filed in this court. In substantiating his contention, Mr. Reuben submitted that the Application originated

from the **Civil Case No. 45 of 2016** determined at the **Resident Magistrates' Court of Bukoba at Bukoba**, but Mr. Bitakwate registered the present Application in **Misc. Land Application Registry** instead of **Misc. Civil Application Registry** of this court. To the opinion of Mr. Reuben, these are two distinct registries in the same court, but invite two different procedures and court fee. According to Mr. Reuben, if documents are filed without proper payment of court fee as per the **Court Fees Rules of 2018, GN. No 247 of 2018**(the Rules), the registration of the Application is as good as nothing has been registered.

This contention was not received well with Mr. Bitakwate who argued that it is just a typing error which may be cured by inviting section 96 of the **Civil Procedure Code** [Cap. 33 R.E. 2019] (the Code) and precedent of **Omary Shaban S. Nyambu v. Capital Development Authority & Two Others**, Civil Appeal No. 256 of 2017, which stated that misdescription in the title of appeal as Civil Appeal instead of Land Appeal in the notice and record of appeal does not go to the root of the contents of the appeal. Finally, Mr. Bitakwate prayed this court to overrule the objection and amend the Application to read **Misc. Civil Application 95 of 2020** as per

practice displayed in the precedent of **Jewels & Antiques (T) Ltd v. National Shipping Agencies Co Ltd** [1994] TLR 107.

In building up a little bit from his earlier submission, Mr. Reuben appreciated the service of Mr. Bitakwate by conceding that he filed the Application in the wrong registry. However, Mr. Reuben argued that granting the prayer of Mr. Bitakwate will cause more chaos and confusions in this court as the prayed amendment will go up to specific registries which may have already received other fresh suits. With the precedent in **Omary Shaban S. Nyambu v. Capital Development Authority & Two Others** (supra), Mr. Reuben argued that it determined an issue which concerns wrong title, and not wrong registry of this court.

In the present Application it is certain and settled that there is uncertainty of the Application. It is not known whether it is **Misc. Land Application** or **Misc. Civil Application**, as from the title and contents in the Application. It is fortunate that Mr. Bitakwate did not dispute that, but thinks this court has mandate to rectify the discrepancies from the authority in section 96 of the Code and precedent of **Omary Shaban S. Nyambu v. Capital Development Authority & Two Others**, (supra). On the other hand, Mr. Reuben thinks that the amendment would invite more chaos than cure. To

substantiate his claim, he cited two issues; first, once that is done, the Rules will be violated in terms of required fee in this court; and, second, the Register in Misc. Land Application No. 95 of 2020 may have already been occupied by another application hence confusion in applications in this court.

I think, with emergence of science in our registries systems, Mr. Reuben's arguments holds merit. Amending the Application to display **Misc. Civil Application No. 95 of 2020**, may collide with other applications of the same title already filed in this court. As the issue of amendment of the Application goes to the root of electronic filing systems of this court, it needs to be refiled to have a proper numbering and record of this court. Again, there is an issue of requirement of proper fee as per Rules. Failure to pay the requisite court fee amounts to non-registration of the suit. I do not know how to cure this scenario which does not only concerns title of the Application, but specific registry with specific registration fee requirements.

I understand in a situation where the title was wrongly printed as in the precedent of **Omary Shaban S. Nyambu v. Capital Development Authority & Two Others**, (supra) or depicting appellant instead of applicant as in the decision of **Gapoil**

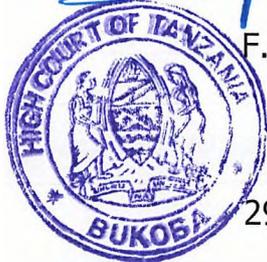
(Tanzania) Limited v. The Tanzania Revenue Authority & Two Others, Civil Appeal No. 9 of 2000. I also understand that after enactment of section 3 in the Code on overriding objective principle, this court has been flexible in recognizing and rectifying wrong citation of the section (see: **Alliance One Tobacco Tanzania Limited & Another v. Mwajuma Hamisi & Another**, Misc. Civil Application No. 803 of 2018 and **Samwel Munsiro v. Chacha Mwikwabe**, Civil Application No. 539/08 of 2019) or wrong spelling in citation of statutes (see: **Elisha Ezron Misigaro v. Mukalehe Village Council**, Misc. Land Case Application No. 17 of 2019). In some precedents it was narrated that this court may move to grant the order prayed, provided it has the mandate to do so regardless of the status of the of discrepancies (see: **Dangote Cement Limited v. NSK Oil and Gas Limited**, Misc. Commercial Application No. 8 of 2020).

All this is done by this court in search of justice. However, that does not mean that learned counsels are exonerated from learning the law or to do their homework thoroughly with several editorial work. If this court finds that there is laxity on part of learned counsels (see: **Transport Equipment Ltd v. D.P. Valambhia** [1993] TLR 91 and **Umoja Garage v. National Bank of Commerce** [1997] TLR 109) or the amendment may lead to more chaos and confusions

in this court than cure, like in the present Application, or where an order of this court may destruct the science in electronic filing systems of this court, or violates the Rules, the prayer of amendment in the Application may not be granted. In any case, non-payment of proper fee of this court as per Rule 3 of the Rules, invites obvious consequences from this court. It can be correctly said that the Application has not been arisen. Without mincing words, the present Application is not properly filed and therefore incompetent before this court.

In conclusion and considering the stated reasons, I have formed an opinion to uphold the preliminary objection and strike out the Application as being misconceived and incompetent before this court. I make an order for costs in favour of the Respondent.

It is so ordered.


F.H. Mtulya
Judge
29.03.2021


This Ruling was delivered in chamber under the seal of this court in the presence of the Applicant, Mr. Johnbosco Rwabutiti and his learned counsel Mr. Joseph Bitakwate and in the presence of the Respondent, Mr. Sabiti Kainamula and his learned counsel, Mr. Gerasi Reuben.


F.H. Mtulya

Judge
29.03.2021