

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

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**Misc. Land Application No. 11 of 2021**

(Arising from Land Case No. 2/2021 of the High Court at Kigoma)

**ELIAS S/O SAMWEL.....1<sup>ST</sup> APPLICANT**

**FLORA D/O RAPHAEL .....2<sup>ND</sup> APPLICANT**

**JUMA S/O MVINZA & 22 OTHERS.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**KAZURAMIMBA VILLAGE COUNCIL .....1<sup>ST</sup> RESPONDENT**

**UVINZA DISTRICT COUNCIL .....2<sup>ND</sup> RESPONDENT**

**SELEMANI S/O NTIYUMVIGWA .....3<sup>RD</sup> RESPONDENT**

**HON. ATTORNEY GENERAL .....4<sup>TH</sup> RESPONDENT**

**R U L I N G**

29<sup>th</sup> & 29<sup>th</sup> March, 2021

**A. MATUMA, J.**

The applicant brought this application under certificate of urgency for an order to restrain the respondents from developing the suit premises pending determination of the main suit.

They did not however effect service within a reasonable time as service to the 3<sup>rd</sup> respondent was made yesterday and to the rest of the respondents it was this morning.

Since this matter has been initiated by chamber summons supported by affidavit, the reply thereof can only be by counter affidavit as both Affidavit and counter affidavit are evidence on facts.

The learned State Attorney Mr. Allan Shija was ready for hearing but I cannot see how would he counter argue the affidavit of the applicants by mere arguments at the hearing which are not subject even to cross examination. Allowing him as such would serve no useful purpose as whatever he might say or argue cannot supersede the affidavit which by itself is evidence. He could have a filed counter affidavit through which his arguments would base. See ***Morandi v. Petro (1980) TLR 49.***

Even though, it is not the respondents' fault as they have not been served with the affidavit within a reasonable time for them to reply by counter affidavits and have a base of argument at the hearing.

Mr. Kabuguzi learned advocate for the applicants submitted that the learned State Attorney was on leave and his office was closed. The Attorney General's office cannot in any manner be closed merely because a staff thereof is on leave, such office is big and in fact not individual. I find the reason unfounded. But again, he did not say why such service could have not been effected through the 2<sup>nd</sup> respondent who stands along with the Attorney General in this matter.

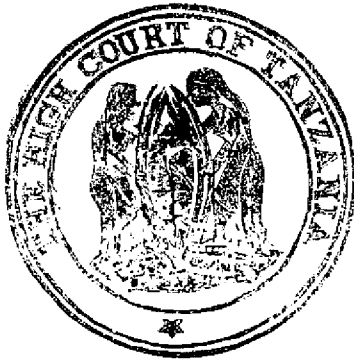
In the circumstances, I take that the applicants have defaulted service to the opponent parties which is as good as failure to prosecute their application as I once decided in the case of ***Matias Luhana versus Mupizi Mpuzu, Misc. Land Case Appeal No. 2 of 2019***, High Court at Kigoma that;

*'Any failure by the appellant to effect service would amount to failure to prosecute his appeal as prosecution of the appeal includes effective service of not only the appeal documents, but also the notice of the date of hearing of the appeal or mention for necessary orders as the case may be'*

In the instant application, the chamber summons and affidavit have been effected to the respondents yesterday and today respectively to the extent that they have not been afforded opportunity to respond. I therefore dismiss this application for want of prosecution.

Even though, let me put it clear that so long as there is a pending main suit, any party who will develop the suit premises, shall be doing so on his/her own risks depending to the outcome of the suit itself. Any development thereat after the institution of the suit shall not be used as a ground in favour of any one in any subsequent proceedings.

It is so ordered.



**A. Matuma**

**Judge**

**29/03/2021**

**Court:** Ruling delivered in chambers in the presence of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants in person and their Advocate Mr. Method Kabuguzi and in the presence of the 3<sup>rd</sup> Respondent in person and Mr. Allan Shija learned State Attorney together with Mr. Zacharia Nzese learned Solicitor for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents.

**Sgd: A. Matuma**

**Judge**

**29/03/2021**