

**IN THE HIGH COURT OF TANZANIA
IN THE MWANZA DISTRICT REGISTRY**

AT MWANZA

CIVIL APPEAL NO. 09 OF 2021

***(Originating from the Ruling of the Resident Magistrate's Court of Mwanza at
Mwanza in Civil Case No. 14 of 2020)***

CHALO N KINGWA & OTHERS.....APPELLANTS

VERSUS

PHINIAS LUGAILA & OTHERS.....RESPONDENTS

REASONS FOR THE DECISION

2nd & 30th June, 2021

RUMANYIKA, J

When on 2/06/2021, with respect to decision and orders dated 14/12/2020 of Mwanza Resident Magistrate's Court (E.C. Lukumai – RM) the appeal was, by way audio teleconference called on for hearing, through mobile numbers 0747201575 and 0753097497 respectively I had to hear the parties on the incompetence based preliminary point of objection (the p.o) formally raised, and now taken by Boniphace Sarilo learned counsel for Phinias Lugaila and six (6) others (the respondents). Chalo Nkingwa and 2 others (the applicants), Ferdinand Sami (the 2nd respondent)

appeared in person for also for the fellows. I sustained the p.o therefore dismissed the purported appeal and reserved the reasons therefor. Here are the reasons.

Mr. B. Sarilo learned counsel submitted that contrary to the rule against appeals on intermediate court orders, the appeal was against such an order that instead of the respondents being sued as local village government leaders they were wrongly sued only in their personal capacities, the court sort of directed for amendments, and the order did not therefore on merits finally determine the original Civil Case No. 14 of 2020, the appeal was liable to be dismissed with costs.

On behalf of the applicants the 2nd respondent submitted that as they were aggrieved by the order and the learned trial Resident Magistrate explained to them the right of appeal, here they were. In fact the appellants insisted for hearing of their appeal. That is it.

In fact the issue was not whether court interlocutory orders were appealable but rather, given its nature and legal effects whether the impugned order was interlocutory. The answer is yes. Having had heard them, in blacks and whites the learned trial Resident magistrate is on record having said:-

...Now coming to the merits of the preliminary objection, the same is based on the fact that the defendants have been wrongly sued because they were acting as leaders of the village council and that the proper party to be sued was the village council...I find that, the plaint and its annexures disclosed a cause of action against the defendants and not the Kitongosima village council. Hence the defendants were properly sued. The fact that the defendants were acting in their positions or village government leaders is a fact that needs to be proven and ascertained by evidence, hence it does not qualify...to be argued as a preliminary objection as per requirement in the case of **Mukisa Biscuits Manufacturing Company Ltd Vs. West End Distributors Ltd (1969) E.A 696.**

With all intents and purposes it is very unfortunate that the appeal was even preferred and admitted in the first place. I will increasingly hold that with respect to appeals against interlocutory orders, therefore premature appeals, the law intends only to promote speedy end of substantive justice. It is for this reason that the purported appeal was dismissed with costs on 02/06/2021.

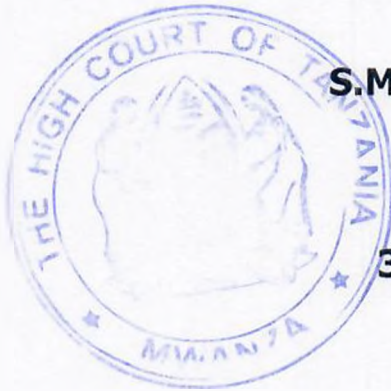


S.M. RUMANYIKA

JUDGE

30/06/2021

The reasons for decision delivered in chambers this 30/06/2021 in the absence of the parties.



S.M. RUMANYIKA

JUDGE

30/06/2021