

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LAND DIVISION

(APPELLATE JURISDICTION)

MISC. LAND APPLICATION NO. 19 OF 2021

(Arising from Land Appeal No. 19/2020 of the High Court of Kigoma before Hon. A. Matuma, J. Originating from Land Appeal No. 2 of 2016 of the District Land and Housing Tribunal for Kigoma at Kigoma from Bukuba Ward Tribunal)

NYAMUNINI S/O NTARAMBIGWA.....APPLICANT

VERSUS

SIMON S/O KIKOTI..... RESPONDENT

R U L I N G

23rd June, & 16th July, 2021

A. MATUMA, J.

This is a ruling in respect of the growing trend of advocates and their clients for being unfaithful and honest to the court by presenting and filing false documents to the detriment of justice.

The parties herein had a dispute over ownership of land which started in the Ward Tribunal of Bukuba. The matter went on appeal in the District Land and Housing Tribunal for Kigoma at Kigoma vide Land Appeal No. 2/2016. The applicant lost the said appeal but could not lodge his appeal in time hence Misc. Land Application No. 48/2020. I personally presided

over such application which I dully granted on the 30th October, 2020. I granted the Applicant extension of 21 days within which to appeal.

The Applicant did not honour the days extended and lodged his appeal Misc. Land Appeal No. 19 of 2020 out of the extended 21 days. His appeal thus faced a legal issue for having been filed out of time. In that respect such appeal was struck out on the 4th day of February 2021.

The instant application is thus brought to seek further extension of time within which he can refile another fresh appeal.

At the hearing of this application, the parties were present in persons and the applicant was also represented by Mr. Joseph Mathias learned advocate. The learned advocate as usual made his oral submission in support of the Application.

When the respondent took over the floor to reply to the applicant's submission, he raised a concern against the applicant. The respondent a lay man argued that the real Nyamunini Ntarambigwa was not in court and the one who introduced himself as the applicant was not the real applicant in person. He named him as Boazi Nyamunini, a son of the Applicant. He further lamented that it was this Boazi Nyamunini engaging advocates to drag him in court since then at the District Land and Housing

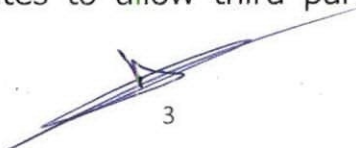
Tribunal while Nyamunini Ntarambigwa in person has already surrendered the legal battle with him.

Having heard as such I wanted to satisfy myself as to who signed and verified the affidavit beforehand for the instant application.

It transpired before me that it was this fake applicant (Boazi Nyamunini) who drew and filed this application, it is him who deposed and verified the affidavit in support of the application. He did all these in the name of the Applicant herein. In his own words before me having so requested he stated;

'It is me who signed the Application. I signed the same because my father allowed me to make follow up of the matter as his son'.

With the clear facts that the jurat of attestation in the affidavit accompanying the application was made by a fake person impersonating himself as Nyamunini Ntarambigwa, I asked the applicant's advocate to address me on the competence of this application. The learned advocate without much ado prayed to withdraw the application for being incompetent in the eyes of the law. I did not allow him to withdraw the matter and decided to compose this ruling just as a reminder to the growing trend of advocates to allow third parties to engage them to



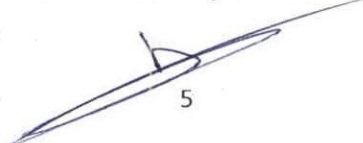
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pursue matters in the names of parties who are not even aware that there are suits in court in their respective names. Some others are even not alive. I will give few examples;

a) In the case of **Madushi Nzuki versus Dunia John**, Criminal Appeal No. 7 of 2020, High Court at Kigoma, Madushi Nzuki was charged in the primary court of Uvinza for cattle theft. He was however acquitted. Dunia John the complainant was not aggrieved and thus did not appeal. One Chama a third party and without consent or knowledge of the said Dunia John took the acquittal judgment and engaged an advocate to appeal against it in the District Court. They successfully appealed and the acquittal was substituted with a conviction. Madushi Nzuki was thus convicted and sentenced to serve five years jail term. He became aggrieved and therefore appealed in this court. The problem arose in the service to the respondent. He was no where to be seen. I summoned his advocate who previously represented him in the District Court. The said advocate when made appearance before me he was honest that he did not know the respondent as at the District Court, he got instructed by a third party by the name Chama. The appellant's appeal could not thus proceed as the respondent was no where to be seen and actually not aware whether after the judgment of the lower court, there was an appeal to the District Court. I thus exercised my Revisional Powers to remedy the situation.



b) In **Daudi Bujenjedeli and two others versus Village Council of Mnanila Village, Misc. Land Application No. 53 of 2020**, the real parties Daudi Bujenjedeli, Kobali Mlongo and Kanubu Lekegwa successful sued the village council for compensation. Both parties were satisfied with the decree of the trial tribunal. The village council started the process to compensate the decree holders and managed to settle the compensation with Kanubu Lekegwa. When she was still in the process to settle the compensation with the remaining two decree holders, it transpired that there was an appeal to the high court against the decree. The appellants were the very three decree holders herein above named. She thus Stopped the compensation process pending the determination of the appeal. She informed the decree holders that she could not pay the compensation for they have appealed. It is when the real decree holders became astonished of the appeal as they did not appeal. They thus wrote to this court lamenting their names to have been used in the appeal while they did not appeal nor engaged any person to act in their behalf. Kanubu Lekegwa appeared in person at the hearing of the appeal and wondered how could he appeal while he was already been paid fully his compensation. When I asked the learned advocate who was representing the applicants, he conceded that he did not know them nor had at any time met them. He explained that he was merely instructed by a third party

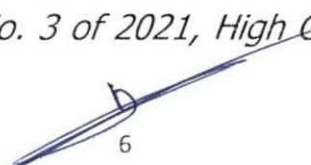


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namely Julia Leonard. I was thus necessitated to struck out the matter for having been lodged by a third person without locus standi camouflaging herself into the names of read parties.

c) Misc. Land Application No. 11 of 2021, High Court at Kigoma, Elias s/o Samwel, Flora s/o Raphael and Juma s/o Mvinza sought leave to represent 22 others and were dully granted. They then instituted a land case No. 2/2021. When the matter reached a stage of first pre-trial conference, two of the Plaintiffs arose lamenting their names to have been used while they did not have any interest in the dispute property nor they had any claim against the defendants. Upon inquiry, I found that not only in the application for leave to represent others, but also in the suit itself the plaintiffs were not real. The three plaintiffs had forged the list of claimants by inserting names and caused them to be countersigned. When I asked the plaintiffs' advocate, he explained that he entrusted the first three plaintiffs and directed them to acquire consent of others. As it was difficult to verify the list and ascertain the real parties, I was necessitated to struck out the suit so that each party to file a separate suit and if need be, consolidation shall be made in the due course.

*d) In **Evansi s/o Bugale versus Jimi s/o Modesti**, Misc. Land Application No. 3 of 2021, High Court at Kigoma, it*



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was the legal officer in the firm of Advocate who signed the affidavit purporting to be the applicant. So, it was an application drawn by the firm of advocate in the name of the Applicant Evansi Bugale, but the said applicant though his name was used in the affidavit accompanying the application, it was not him who deposed nor signed it. I was in the like manner necessitated to struck out such application.

These are just few examples. It is a growing habit in the Region for advocates not to bother with ascertaining and verifying their clients. As such **busy-bodies**, provided that they have monies, have been engaging advocates to initiate suits and prosecuting them in the names of other people who are not even aware of those suits.

This is very dangerous, in the administration of justice in case an adverse order is issued against the party who although appears in the matter but was not aware of the matter altogether. By that time a third party might have gone at large and or deny completely to have acted anyhow in the matter. The respective advocate might find himself necessitated to lie that it was such **a victim-party** who really engaged him/her just to survive the professional misconduct penalties and survive his/her name in the roll of advocates.

In the case of Daudi Bujenjedeli supra I held for instance;

'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'.

I reiterate the same in the instant matter. The applicant if at all was authorized by his father, he ought to have filed relevant legal documents to that effect. His advocates should have as well advised him accordingly. What has been done in the instant application is both a professional misconduct on the party of advocates who attested the affidavit and his fellow advocate who identified this fake applicant (Boazi Nyamunini) to him as being Nyamunini Ntarambigwa as reflected in the jurat. It is as well a criminal offence for one to impersonate the other.

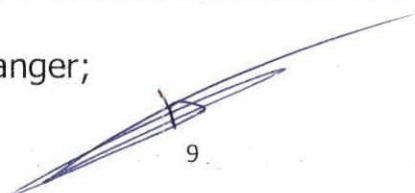
In the case of Evansi Bugale supra, for the need of the parties and their advocates to be honest to the Court for the sake of justice, I held;

'In terms of the provisions of order VI Rule 17 of the CPC, the duty of the court is to determine the real question in controversy between the parties. In so doing the court needs to be availed with true facts and evidence and the advocates are duty bound to assist the court as such. It is not expected

that an advocate duly enrolled in the role of advocates can either by himself/herself falsify the pleadings/documents, or collude with his/her client so to falsify. By doing so the advocate shall be committing a serious misconduct against various provisions of the Advocates Act as well as various regulations of the Advocates (Professional Conduct and Etiquette) Regulations, 2018'.

I reiterate such holding in the instant application. The fake applicant herein was assisted by some unfaithful advocates to draft the documents in the name of Nyamunini Ntarambigwa (the Applicant), introduced as such among themselves and finally attested a false affidavit. So, they colluded with the fake applicant to file false documents and deceive the court to act on them.

It should be born in mind that a fake applicant in this application (Boazi Nyamunini) had several advocates at different stages representing him as Nyamunini Ntarambigwa while they knew or ought to have known that he was not. They drew several documents deceitfully. I remind them once again as I did in the case of **Evance Bugale** supra, that according to regulation 92 (2) of the Advocates (Professional Conducts and Etiquette) Regulations supra, the following are professional misconducts which might subject them to the relevant authorities to be dealt with and might put their practice into danger;



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- i. to institute proceedings which are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring another party.*
- ii. to assist or permit the client to do anything which is dishonest or dishonourable.*
- iii. to deceive or attempt or participate in the deception of a court or influence the course of justice by offering false evidence.*
- iv. to present in court a false or deceptive, exaggerated or inflammatory affidavit.*
- v. to assist in any way the commission of fraud, crime or illegal conduct.*
- vi. to permit anyone to impersonate another.*

All the herein prohibitions have been committed in the instant application. I am tired of this habit and cannot tolerate more. This would be my last sympathy. I will start taking legal measures in accordance to the powers vested in me by law as a judge section 22(1) (2) (a) and (b) of the Advocates Act, Cap. 341 R.E. 2019. When such time comes, one should blame nobody, but his or her own misconducts.

I actually observed in the case of Evansi Bugale supra;

'It is from these fake, false and fraud documents which damage the reputation of the court once they go undetected as the opponent parties would not be positioned to know that the courts have been deceived. It is the reputation of the court that would be put into inquiry. The reputation and dignity of the court must therefore be protected...'

With the herein observations, I find this application incompetent for having been brought by a third party without any locus impersonating the real party Nyamunini Ntarambigwa who appears to have not initiated, drawn, signed or acted on the documents at hand in any manner. I therefore struck out this application. No orders as to costs as the real applicant is not the one who initiated these proceedings. The respondent is at liberty to take legal actions for redress if he so wishes against both Boazi Nyamunini and advocates who have been assisting him to drag him (respondent) in court corridors and chambers all the time.

As I did in the case of Evansi Bugale supra, I direct that this Ruling be served to TLS chapter Convenor (Kigoma) for him or her to share it with other advocates in the Region for them to take note that whenever I shall encounter any matter of a similar nature, I will immediately take the necessary legal measures against the respective advocate including suspending his practice and forwarding him to the Advocates' Committee to be dealt with in accordance to the law. They should thus take necessary

steps to withdraw their pending suits or application of a similar nature and refrain from instituting others. Life might be tough, yes! Clients might be difficult to get, yes! Busy-bodies might have good money and handsomely paying, yes! But as an Advocate, let one confine to professional ethics and earn a living from justifiable legal incomes only.

It is so ordered.




A. Matuma

Judge

16/07/2021

Court: Ruling delivered in the presence of the fake Applicant (Boazi s/o Nyamunini) and the respondent in person. Right of appeal explained.

Sgd; A. Matuma

Judge

16/07/2021