IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF BUKOBA

(AT BUKOBA)

Misc. LAND CASE APPLICATION No. 38 OF 2021

(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 253 of 2010)

LEONIDAS KARANI KITAMBI ---------- APPLICANT

Versus

GREGORY MUSHAIJAKI ---------- RESPONDENT

RULING

22.10.2021 & 25.10.2021
F.H. Mtulya, J.:

Mr. Leonidas Karani Kitambi (the Applicant) wishes to dispute *ex-parte judgment* of the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) **in Land Application No. 253 of 2010** (the case) which was decided in favour of Mr. Gregory Mushaijaki (the Respondent) against the Applicant and two (2) other persons, namely: Mr. Venath Paul & Adventina Ms. Mukarwesherwa.

However, the Applicant found himself out of thirty (30) days' statutory time to prefer a setting aside order in the Tribunal and forty-five (45) days' period to lodge an appeal in this court as required by the law in Regulation 11 (2) of the **Land Disputes**

Courts Act (the District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003 (the Regulations) and section 41 (2) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act) respectively. The Applicant, therefore, decided to approach this court through the proviso enacted in section 41 (2) of the Act and filed **Misc. Land Application No. 38 of 2021** (the Application) seeking enlargement of time to appeal out of statutory time to contest the *ex–parte judgment* of the Tribunal in the case. However, before the Application was scheduled for hearing, it received four (4) points of preliminary objection (the objection), in the following texts, *viz*: first, the application contained defective affidavit; second, the application is time barred in law; third, no application for set aside of the *ex-parte order* was sought in the Tribunal; and the applicant failed to join all the parties in the case decided by the Tribunal.

When the application was scheduled for mention on 1st June 2021, the parties invited legal services of Mr. Prosper Mulokozi and Mr. Mathias Rweyemamu, who agreed to argue the points of objection by way of written submissions. The prayer was granted by this court and scheduling order was drafted and settled. In brief, Mr. Mathias, who appeared for Mr. Gregory Mushaijaki (the Respondent) contended that the application is incompetent before this court as: first, the affidavit in support of the application is defective; second, it

is out of time for 120 days; it seeks extension of time against an *ex-parte judgment*; and failed to join all the parties in the *ex-parte judgment*.

However, in his written submission, Mr. Mathias dropped two (2) points of the objection and substantiated the other two (2), namely: first, the application seeks extension of time to dispute an *ex-parte judgment* of the Tribunal without abiding with the provision in Regulation 11 (2) of the Regulations; and second, the application was filed out of sixty (60) days' time period contrary to the provisions in item 21 Part III of the Schedule to the **Law of Limitation Act** [Cap. 89 R.E 2019] (the Limitation Act).

Briefly, in the first point of objection, Mr. Mathias contended the *ex-parte judgment* which was not registered and tested at the same Tribunal, cannot be appealed at this court. According to Mr. Mathias, the filing of the Application for enlargement of time in this court to challenge *ex-parte judgment* of the Tribunal contravenes both the existing laws and established practice of this court. In order to bolster his argument, Mr. Mathias cited several authorities in Regulation 11 (2) of the Regulations; Order IX Rule 13 (1) of the **Civil Procedure Code** [Cap. 13 R.E. 2019 (the Code); and support of a large family of precedents in **Amir Moshi Textile Mills v. B.J. De**

Voest [1995] LRT 17, **Harsen Khan v. Sheo Baksh Sigh** [1885] Cal. 6.11. 237, **Balakrishma v. Vasudeva** [1974] 44.1, **Subzali Garage Ltd v. Building Hardware & Electrical Supply Co. Ltd** [1974] LRT 40 and **Tambueni Abdullah & 89 Others v. National Social Security Fund**, Appeal No. 33 of 2000.

So as to persuade this court to decide in his favour of his client, Mr. Mathias invited the purposive approach in interpretation of the Regulations and civil law in favour of public policy of this State in land matters. He is asking judges of this court to maintain public policy regulating land issues in this State. To his opinion, when a public policy is outlined or reduced into a legislation, courts of law are supposed to interpret the law in favour of the policy that influenced the enactment of the law.

To substantiate his arguments and opinions, Mr. Mathias cited Regulation 11 (2) of the Regulation arguing that it was enacted from public policy on land matters to give right to the affected persons in *ex-parte judgments* emanating from the Tribunal to apply for set aside orders in the same Tribunal, and if the orders are refused, may wish to prefer appeals in this court. To his opinion, parties who receive *ex-parte orders* from the Tribunal, must exhaust all available remedies in Regulation 11 (2) of the Regulations.

In the second point of the objection, Mr. Mathias submitted that the application is time barred as it was filed out of sixty (60) days' time period contrary to the provisions of the law in item 21 Part III of the Schedule to the Limitation Act. According to Mr. Mathias, the cited law allows applications in sixty (60) days, even if an application is originated from a land dispute preferred under section 41 (2) of the Act, as the Act is silent on limitation of time to prefer an application. Finally, Mr. Mathias argued that the application be dismissed for want of time limitation as provided in section 3 of the Law of Limitation Act.

In protest of the points in the objection, Mr. Leonidas Karani Kitambi (the Applicant) invited learned counsel, Mr. Mulokozi to argue the objection. In the first limb of the objection, Mr. Mulokozi conceded that the enactment in Regulation 11 (2) of the Regulations has reduced the public policy on land matters into an enactment. However, in his opinion, the enactment does not restrict a party against whom the case proceeded *ex-parte* to appeal in this court on the merit of the *ex-parte decree*.

In order to substantiate his argument, Mr. Mulokozi contended that Regulation 11 (2) was enacted by use of the word *may*, which invites discretion on part of the aggrieved party to either apply for

set aside order in the same Tribunal or prefer an appeal in this court to dispute the *ex-parte judgment*. To his opinion, the law regulating interpretation of a word *may* is enacted in section 53 (1) of the **Interpretation of Laws Act** [Cap. 1 R.E. 2019], which allows discretion on part of applicants to either prefer an application for setting aside or appeal against the *ex-parte* order of the Tribunal. Mr. Mulokozi submitted further that there are no any provisions in land laws and Regulation 11 (2) of the Regulations which bar appeals arising out of *ex-parte orders* of the Tribunal.

Mr. Mulokozi also interpreted the words: *all appeals, revisions and similar proceedings from or* ***in respect of any proceedings*** *in the Tribunal in exercise of its original jurisdiction shall be heard by the High Court* enacted in section 41 (1) of the Act to confer jurisdiction in this court to entertain all appeals in respect of any proceedings in the Tribunal. It is the submission of Mr. Mulokozi that the words: *in respect of any proceedings* covers proceedings that proceeded *ex-parte* and that if the intention of the legislature was to exclude an appeal over *ex-parte* decrees, it could have stated it expressly in the Regulations or Act.

Mr. Mulokozi further cited the provisions in section 51 (1) of the Act and section 70 of the Code contending that every decree passed

by the court subordinate to this court is appealable save for a decree passed by the consent of the parties. According to Mr. Mulokozi, this court may invite purposive approach of judicial interpretation in interpreting section 41 (1) of the Act to include appeals which originated from *ex-parte decisions* of the Tribunal to be heard and determined in this court.

In finalizing his protest in the first point of objection, Mr. Mulokozi contended that the provisions in Regulation 11 (2) of the Regulations are enacted in subsidiary legislation which cannot override the provision of the legislation in section 41(1) of the Act, which is a mother law. To his opinion, section 41 (1) of the Act, derived its mandate and legitimacy from the provision in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E 2002] (the Constitution) on the right to appeal which is supported by the precedent in **The Registered Trustees of the Pentecostal Church in Tanzania v. Magreth Mukama** (a minor by her next friend Edward Mukama), Civil Appeal No. 45 of 2015.

The second point of objection raised by Mr. Mathias received a quick reply from Mr. Mulokozi that an application for extension of time may not necessarily be filed within sixty (60) days after the impugned decision as per requirement of the law in item 21 Part III

of the Schedule to the Limitation Act. According to Mr. Mulokozi, the present application seeks enlargement of time to challenge the *ex-parte judgment* of the Tribunal in an appeal at this court under section 41 (2) of the Act, which require good cause to be produced in court after expiry of the forty five (45) days of appeal.

In order to bolster his argument, Mr. Mulokozi cited precedents of the Court of Appeal in **Tanzania Rent Car Limited v. Peter Kimuhu**, Civil Appeal No. 226 of 2017 contending that the tests established by the Court of Appeal on the subject are sufficient reasons and accountability of each day of the delay, and not sixty (60) days after delivery of judgments of the Tribunal.

I have scrutinized the record of this application and scanned the two registered points of the objection, and found out that the dual learned minds are asking this court to interpret provisions in: first, section 41 (2) of the Act on the conditions for enlargement of time period after expiry of forty five (45) days and the words: *in respect of any proceedings*; and, second, Regulation 11 (2) of the Regulations on the word: *may.*

It is a well settled principle of the statutory interpretation that where a statute is enacted in plain, clear and unambiguous terms, it does not need interpretation and no need to resort to the rules of

construction. That is the practice of this court and Court of Appeal (see: **Republic v. Mwesige Geofrey Tito Bushahu**, Criminal Appeal No. 355 of 2014, **The Board of Trustees of the National Social Security Funds v. The New Kilimanjaro Bazaar Limited**, Civil Appeal No. 16 of 2004, **The Registered Trustees of the Pentecostal Church in Tanzania v. Magreth Mukama** (supra). In short, this court will be asked on interpretation of the law when the words are unclear and unambiguous.

It is fortunate that the parties in the present protests are not contesting on the enactment of the law as such, but whether section 41 (1) of the Act and Regulation 11 (2) of the Regulations can be linked with other laws to interpret the words: *may* and *in respect of any proceedings* enacted in plain and clear language can be used to allow new practice in preferring an appeal in this court emanated in *ex-parte orders* of the Tribunal. I will explain on each point of the objection raised.

In the second point of objection, Mr. Mathias cited section 41(2) and invited other laws in section 3 (1) and item 21 Part III of the Schedule to the Limitation Act arguing the time limitation after expiry of forty five (45) days in filing an appeal in this court is sixty (60) days whereas Mr. Mulokozi cited the same law supported by the

decision of the Court of Appeal in **Tanzania Rent Car Limited v. Peter Kimuhu** (supra) contending that it is good cause and accountability of days of the delay, which should be tested in an application for enlargement of time after expiry of the forty-five days (45) days of filing an appeal in this court.

I have consulted the cited precedent and found the issue which was tabled before the Court of Appeal, as displayed at page 13 of the decision, that: *whether the sixty (60) days rule conveniently applies in all circumstances and applications*. The issue was replied at page 17 of the Ruling delivered by the Court on 19th September 2017 that:

> *...the limitation of period of sixty (60) days is not meant to apply to applications for extension of time...there is no specific time limit set within which an application for extension of time should be filed.*

The reasoning of the Court is found at page 18 of the precedent:

> *This is not only in accordance with long established practice built in Court's landmark decisions, but also accords to logic that so as to expedite dispensation of justice there is need to avoid, whenever possible,*

multiplicity of applications. This is the spirit of the law as it categorically states that the Court may, upon good cause shown, extend the time...whether before or after the expiration of that time and whether before or after the doing of the act...the wording suggest that even where an applicant is late for so many days beyond the prescribed period of doing an act, he has to file one application for extension of time in which he is to give satisfactory reasons for the delay, including, but not limited to, giving an account for each day of the delay for the whole period he has been late.

Having noted there is long established practice of the Court of Appeal in this State of Tanzania with regard to matters on limitation of time for applicants who prefer applications for enlargement of time, this court cannot be detained to invent a new practice of this court or depart from the directives of previous precedents of our superior court, the Court of Appeal. The precedent in **Tanzania Rent Car Limited v. Peter Kimuhu** (supra) stated all and this court is not required to interpret the matter anymore, and I will restrain myself from doing so.

It is unfortunate that the first point of objection, learned minds did not assist this court with precedents. They are asking this court to interpret the word *may* enacted in Regulation 11 (2) of the Regulations to set a precedent on: *whether the right of appeal can be exercise in land disputes determined ex-parte at the Tribunal.* The Respondent's counsel, Mr. Mathias thinks that Regulation 11 (2) of the Regulation was enacted to cherish public policy on land matters on giving parties in *ex-parte judgment* which emanating from the Tribunal to apply for set aside orders in the same Tribunal, and if the orders are refused, may wish to prefer appeals in this court.

On the other hand Mr. Mulokozi thinks that Regulation 11 (2) of the Regulations was enacted by use of the word *may*, which invites discretion on part of the aggrieved party to either apply for set aside order in the same Tribunal or prefer an appeal at this court to dispute the *ex-parte judgment*, and in any case, section 41 (1) of the Act confers jurisdiction in this court to entertain all appeals in respect of any proceedings emanating in the Tribunal. Regulation 11 (2) of the Regulations, which is invited in the present dispute, and this court is called to interpret the word *may*, is drafted in the following text:

*A party to an application **may**, where he is dissatisfied with the decision of the Tribunal under sub- regulation (1), within 30 days apply to have the orders set aside, and the Tribunal may set aside its orders if it thinks fit so to do an in case of refusal appeal to the High Court.*

(Emphasis supplied).

From this enactment, I see, so to say, there is discretion on the part of the applicant to prefer an application for set aside order. However, I see no any other alternatives which were enacted in the provision to permit an applicant or appellant to prefer an appeal in this court. Impliedly, from the reading of the text in Regulation 11 as a whole, applicant may apply for set aside order, and in case, the order is refused, he *may* have two (2) options only: first, to appeal against the order; or, second, concede the refusal order of the Tribunal. In my considered opinion, there are no any other alternatives available in the provision to open up the Pandora's Box.

That is, as such, may be extracted from plain interpretation of the text in the rule. Therefore, in my considered view, the word *may* in the provision must be interpreted in context of the whole provision in Regulation 11 of the Regulations and reference to section 41 (1) and 56 of the Act. This is important so as to

appreciate the existing nexus in the provisions of the Act and Regulations. For purposes of understanding of the matter, the provisions in Regulation 11, as a whole, are quoted hereunder:

(1) On the day the application is fixed for hearing, the Tribunal shall:

(a) Where the parties to the application are present proceed to hear the evidence on both sides and determine the application;

(b) Where the applicant is absent without good cause, and had received notice of hearing or was present when the hearing date as fixed, dismiss the application for non-appearance of the applicant; and

(c) Where the respondent is absent and was duly served with notice of hearing or was present when the hearing date was fixed and has not furnished the Tribunal with good cause for his absence, proceed to hear and determine the matter ex-parte by oral evidence.

(2) A part to an application may, where he is dissatisfied with the decision of the Tribunal under sub- regulation (1), within 30 days apply to have the orders set aside, and the Tribunal may set aside its orders if it thinks fit so to do an in case of refusal appeal to the High Court.

This Regulation as a whole is a procedural provision intended for better carrying out of the businesses of the Tribunal and this court. It requires parties who do not appear and *ex-parte orders* are issued against them to seek for setting aside orders of the Tribunal,

of course after producing relevant materials substantiating their non-appearance on the hearing date. In my opinion, Regulation 11 (2) of the Regulations is not supposed to be read and interpreted in isolation of the Regulation 11(1) (a), (b), and (c) of the Regulations. The Tribunal must be invited to test the reasons of absence of applicants before they rush to this court.

In any case, section 56 (1) & (2) of the Act empowers Minister responsible for land matters to enact Regulation for better carrying out businesses of the Tribunal hence the Regulations were enacted. I think, in my opinion, the enactment cannot be said to be contrary to the Act as the Regulations act as an enlargement of the Act, and section 41 (1) which is cited by Mr. Mulokozi is not enacted *pari materia* to section 70 (2) of the Code, which provides that: *an appeal may lie from an original decree passed ex parte*.

Following this line of thinking, it is my considered opinion, that the words: *proceeding in respect of any proceedings in the Tribunal in the exercise of its original jurisdiction shall be heard by the High Court* in section 41 (1) of the Act cannot be interpreted to cover *ex-parte orders* delivered by the Tribunal. As I said, the provision is plain and not *pari materia* to section 70 (2) of the Code. As I said earlier, practice in the interpretation of laws in our courts shows that

when a law is enacted in plain and clear language, courts of law are restricted to invent their own interpolations. There is a large family of precedents depicting the practice (see: **Pan African Energy Tanzania Ltd v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 81 of 2019; **Mbeya Cement Company Limited v. Commissioner General**, Civil Appeal No. 160 of 2017, and **Republic v. Mwesige Geofrey Tito Bushahu** (supra).

For instance in the precedent of **Republic v. Mwesige Geofrey Tito Bushahu** (supra), the full court of the Court of Appeal, after borrowing a leaf from US Supreme Court in two decisions of **Consumer Products Safety Commission v. GTE Sylvania**, 227 U.S. 102 (1980) and **Caminetti v. United States**, 242 U.S. 470 (1917), had the following text at page 11 and 12 of the judgment:

> *We have chosen to begin our discussion with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself.* ***Absenting a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.*** *The Court [US Supreme Court] held that* ***if a statute's language is plain and clear: 'the duty of interpretation does not arise and the rules which are to aid doubtful***

meanings need no discussion'. *A few decades earlier, the said Court had succinctly ruled that:* ***'It is elementary that the meaning of a statute must in the first instance, be sought in the language in which the act is framed,*** *and if it is plain, the sole function of the courts is to enforce it according to its terms'.*

(Emphasis supplied).

I am entirely subscribing myself to the above statements of our superior court and I am happy to apply the principle in the present Ruling. The language in section 41 (1) is plain and clear hence must be enforced according to its terms.

In the present dispute, Mr. Mulokozi heavily relied in the precedent of this court in the **Registered Trustees of the Pentecostal Church in Tanzania v. Magreth Mukama** (supra) arguing that an appeal may be preferred in lieu of the application for set aside order of the Tribunal. In order to appreciate the precedent, I will briefly explain what transpired.

In that dispute the facts show that the District Court of Musoma at Musoma (the district court) delivered an *ex-parte judgment* on 21st May, 2015. The decision dissatisfied the appellant in the case hence filed an application for setting aside the *ex-part judgment*,

which was dismissed on 17th August 2015 by the same district court. The appellant then preferred an appeal in **Civil Appeal No. 45 of 2015** before this court at Mwanza (the appeal). However, the appellant decided to prefer the appeal against both the *ex-parte decree* and order refusing to set it aside. The issue before this court was: *whether the appeal by containing two distinct disputes before this court was offending the law in civil procedure.*

Before determination of the matter, this court was invited by learned counsels of the parties to visit and peruse **Civil Procedure of Code** [Cap 33 R.E 2019] in section 70 (2), Order IX Rule 13 (1), Order XL Rule 1 (d) and section 96 (2) of the **Indian Code of Civil Procedure** which is *pari materia* to section 70 (2) of the Code, and precedents in **Mtondoo v. Janmohomed** (1970) HCD 325, **Sosthenes Kagyabukana v. Theobald Kayungulima** (968) HCD 25, **Managing Director, Precision Air Services Ltd. V. Leonard. F. Kachebonaho**, Civil Appeal No. 8 of 2009, and comments from a book titled: **Mulla on Code of Civil Procedure, 16th Edition.**

After glancing the authorities, this court noted that it is a cardinal principle of statutory interpretation that where the wording of a statute is clear and unambiguous, it does not need interpretation. Finally, this court held that the appeal was

incompetent in law and was struck out for want of the law in the civil procedure. The reasoning of the court was that:

> *The two actions cannot be preferred together. The two right of appeal against the two decisions are separate and distinct. They are two different and independent statutory remedies established by different provisions of the law. An appeal against a decision refusing to set aside an ex-parte judgment, or successful order has the effect of maintaining the status quo by restoring the suit. It would thus follow that once the suit is restored, there remains nothing to be appealed against. Contrariwise an appeal against ex-parte decree if successful will have the effect of finally and conclusively disposing of the dispute. There is therefore, no way can the two causes of action be preferred together.*

This reasoning shows that the decision was not related to whether or not an *ex-parte order* of the Tribunal can be contested in an appeal in this court. Contrariwise, the reasoning shows that one action depends on the other. In other words, an appeal depends on the decision of the Tribunal in granting or refusing the set aside order. If the order is refused, the right of appeal comes in as a

matter of right. That is the meaning of exhaustion of all available remedies. It is a cure of unnecessary confusions in our courts.

I understand this court in the appeal had recorded an *orbiter dictum* at page 6 & 7 of the Ruling regarding appeals originating from an *ex-parte order* of the district court. However, the *obiter* was on the provision of section 70 (2) of the Code which expressly provides that: *an appeal may lie from an original decree passed ex-parte*. It is unfortunate we do not have similar provision in the Act, even under the provision of section 41 (1) of the Act.

I am aware that Mr. Mulokozi in persuading this court to decide in favour of the Applicant, he interpreted the words: *in respect of any proceedings* enacted in section 41 (1) of the Act to cover the present dispute. However, as I have said inhere, the enlargement of the provisions in section 41 (1) of the Act is partly enacted in Regulation 11 of the Regulation, which is certain and settled and does not need any interpolations. Therefore, to argue the words *in respect of the proceedings* can rescue the Applicant or Regulation 11 (2) of the subsidiary legislation is enacted contrary to the mother law in section 41 (1) of the Act, as contended by Mr. Mulokozi, is not correct and cannot convince this court.

In my opinion, I think, if the enactors of the law wanted to enact the provision in section 41 (1) of the Act similar to the text displayed in section 70 (2) of the Code, they would have done so. I think the enactors of the land provisions in the Act and Regulations intended to see land disputes are resolved mostly in lower tribunals than in this court unlike normal civil disputes. That, I think, is a public policy, well enacted in our laws (see: section 3 (1) of the Act, section 62 & 3(1) (a), (m) and (n) of the **Village Land Act** [Cap. 114] and section 3 (1) (m) & 167 of the **Land Act** [Cap. 113 R.E. 2019].

The district land and housing tribunals are mostly located in districts of our land than this court. The rules regulating land disputes must make sure that land courts are easily accessible and readily understood by all citizens of this State, including the villagers. The enactment of the Minister responsible for land matter in the Regulations has taken on board the matter for *ex-parte decisions* to be resolved by applications of setting aside orders at that levels.

Taking *ex-parte* orders of the Tribunal further to this court by use of the word *may* or *in respect of any proceedings* might be detrimental to our poor societies in the villages. I cannot subscribe to the school which impliedly curtail poor person's access to justice

in their district levels. Land courts must be easily accessible to all classes in our communities.

Before I pen down in this Ruling, I must let parties in land disputes and learned counsels aware that this court was invited on 1st of March this year to determine similar objection in **David Mugarula v. Leonard Mugoha**, Misc. Land Case Application No. 51 of 2020, and it held that: the Applicant was required to file an application to set aside the *ex-parte judgment* of the Tribunal as per requirement of the law in Regulation 11 (2) of the Regulations. This court arrived into that statement by inviting the decision of the Court of Appeal in **Yara Tanzania Limited v. D. B. Shapriya & Co. Limited**, Civil Appeal No. 245 of 2018. In this precedent, the Court of Appeal stated that:

> *...it is now settled that when a party is aggrieved with an ex parte, summary, or default judgment, he must first exhaust the alternatives or remedies available in the court or tribunal that rendered the decision, before registering an appeal or revision...*

Prior to the precedent in **Yara Tanzania Limited v. D. B. Shapriya & Co. Limited** (supra), two (2) precedents of the same Court were already rendered down regulating the same subject

matter (see: **Jaffari Sanya Jussa & Another v. Saleh Sadiq Osman**, Civil Appeal No. 54 of 1997 and **Regional Manager–TANROADS, Lindi v. D.B. Shapriya & Company Ltd**, Civil Appeal No. 86 of 2010). The present Applicant did not exhaust all available remedies enacted in Regulation 11 (2) of the Regulations, and therefore the Application before this court is misconceived. As I said earlier, this Application must be struck out with costs for want of exhaustion of all available remedies. This court will not encourage parties who receive *ex-parte decisions* of the Tribunal to stay until when they wish to come to this court to explain reasons of delay or good cause of their absence on the date of hearing their disputes at the Tribunal.

I am aware that after insertion of section 3A & 3B in the Code and precedent in **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017, this court has been inviting the principle of overriding objective, commonly known as the *oxygen principle* to rescue applications in favour of the merit of the applications. However, the practice shows that the principle *cannot be invoked blindly in disregard of the rules of procedure coached in mandatory terms* or *overhaul the rules of procedure*.

The provision in section 3A & 3B were inserted to facilitate disputes resolution. The principle is not an ancient Greek Goddess of universal remedy called panacea for all ills and situations (see: **Juma Busiya v. Zonal Manager, South Tanzania Postal Corporation**, Civil Appeal No. 273 of 2020, **Puma Energy Tanzania Limited v. Ruby Roadways (T) Limited**, Civil Appeal No. 3 of 2018, **Njake Enterprises Limited v. Blue Rock Limited and Another**, Civil Appeal No. 69 of 2017 and **Mandorosi Village Council & Others v. Tanzania Breweries Limited & Four Others**, Civil Appeal No. 66 of 2017).

The present Application did not exhaust available remedies in the enactment of Regulation 11 (2) of the Regulations hence Application before this court is misconceived. It cannot be rescued by either purposive approach of judicial interpretation of section 41 (1) of the Act & Regulation 11(2) of the Regulation or *oxygen principle*. As I said earlier, this Application is hereby struck out with costs for want of exhaustion of all available remedies in the Tribunal.

Ordered accordingly.

F.H. Mtulya

Judge

25.10.2021

This Ruling is delivered in chambers under the seal of this court in the presence of learned counsels, Mr. Mathias Rweyemamu for the Respondent and Mr. Prosper Mulokozi for the Applicant.

J. M. Minde

Deputy Registrar

25.10.2021