

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 619 OF 2021**

**RAMADHAN KIPENYA ..... 1<sup>ST</sup> APPLICANT**  
**FAITH KYANDO ..... 2<sup>ND</sup> APPLICANT**  
**OSWALD MWINUKA ..... 3<sup>RD</sup> APPLICANT**  
**INNOCENT PETER ..... 4<sup>TH</sup> APPLICANT**

***VERSUS***

**ST. JOSEPH UNIVERSITY OF TANZANIA ..... 1<sup>ST</sup> RESPONDENT**  
**TANZANIA COMMISSION FOR UNIVERSITY-..... 2<sup>ND</sup> RESPONDENT**  
**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

27<sup>th</sup> and 27<sup>th</sup> June, 2022

**KISANYA, J.:**

The above named applicants filed an application for extension of time within which to file review of the decision of this Court in Civil Case No. 122 of 2016. The application is made by way of Chamber Summons and supported by an affidavit of the 1<sup>st</sup> applicant only.

When the matter was called on for hearing today, Ms. Benadetha Chacha, learned advocate appeared representing the applicant. On the other hand, the 1<sup>st</sup> respondent was represented by Ms Salha Mililima and Ms Florentina Nina, learned counsel, while the 2<sup>nd</sup> and 3<sup>rd</sup>

respondents had the legal service of Ms. Debora Mcharo and Ms. Roselin Ruta, learned State Attorneys.

After a short dialogue with the bench, Ms. Benadetha conceded that the application for extension of time to file application for review was not accompanied by the affidavits of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants. She then prayed to withdraw this matter with leave to refile but with no order as to costs.

Ms. Salha had no objection to the prayer for withdraw. However, she prayed for costs. On her part, Ms. Debora resisted the prayer made by the applicants' counsel. She submitted that the application is incompetent for want of affidavit of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants. Citing the case of **Ghati Methusela vs Matiko Marwa Mariba**, MZA Civil Application No. 6 of 2016, the learned counsel urged me to strike out this matter. She was of the firm view that an incompetent matter cannot be withdrawn.

As conceded by the learned counsel for the applicants, the chamber summons is not supported by affidavits of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants. In terms of the law, an application to this Court is made by way of chamber summons supported by affidavit. See for instance,

Order XLIII, Rule 2 of the Civil Procedure Code, Cap. 33, R.E 2019. I agree with Ms. Debora that in the absence of the affidavits of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants named in the chamber summons, the present application is incompetent.

On the way forward, I am also at one with Ms Debora that an incompetent matter cannot be withdrawn. Being guided by the position stated in **Ghati Methusela** (supra), the proper recourse against an incompetent matter is to strike out the same.

In the light of the foregoing, this application is hereby struck out for being incompetent. Since the matter is disposed of basing on the issue raise by the Court, I make no order as to costs. The applicants may wish to file a competent application.

DATED at DAR ES SALAAM this 27<sup>th</sup> day of June, 2022.



S.E. Kisanya  
JUDGE