

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**MISCELLANEOUS CIVIL APPLICATION NO. 8 OF 2022**

**KAENGESA ENVIRONMENTAL**

**CONSERVATION SOCIETY (KAESO) ..... APPLICANT**

**VERSUS**

**IUCN NATIONAL COMMITTEE FOR**

**NETHERLANDS FOUNDATION ..... RESPONDENT**

(Arising from Civil Appeal No. 11 of 2021 High Court of Tanzania at Sumbawanga)

**RULING**

Date: 22 & 22/07/2022

**NKWABI, J.:**

Based upon a Civil Appeal that is pending in this Court in which the applicant is the respondent in that appeal. In Civil Case No 7 of 2021 the respondent lost the case as it was dismissed for lack of merits. Aggrieved with the decision of the trial Court, the Respondent filed in this Court a Civil Appeal No. 11/2021 which is still pending. The application brought by the applicant to this Court encountered a preliminary objection raised by the counsel for the respondent. It has two limbs, that:

1. The Court has been wrongly moved in that it has no powers to grant the Order sought under Order XXV Rule 1(i) of the Civil Procedure Code [Cap 33 R.E. 2019].
2. The application is unattainable for being disguised execution proceedings in a wrong forum.

The respondent therefore prayed this Court to strike out the application with costs.

Be that as it may, the applicant had applied to this Court for the following orders:

1. The honourable Court be pleased to order/compel the applicant to issue security for costs to cover the decretal sum of Tanzania shillings one hundred million (T.shs. 1000,000,000/=) awarded to the respondent in the decree subject matter of Civil Appeal No. 11 of 2021 pending before this Court and or any other cost that incurred and likely to be incurred by the applicant.
2. That this honourable Court be pleased to issue any other reliefs deems fit, just and proper in the circumstances of this application.
3. Costs of this application to be borne by the respondent.

I ordered the preliminary objection be disposed of by way of written submissions. The respondent filed her submission to support the preliminary objection on points of law. The same was served upon the counsel for the Applicant.

In reply submission, the counsel for the Applicant conceded the preliminary objection especially on the 2<sup>nd</sup> limb of the preliminary objection stating that:

*"Your Lordship: upon keenly going through the respondent submission, specifically the 2<sup>nd</sup> limb of the preliminary objection in line with the position of the law in the case of **John Paul Shubita & Another** ... as officer of this Court we find it proper not to waste time of this Court and accordingly concede the 2<sup>nd</sup> limb of the respondent's preliminary objection.*

*... and agree that this application be struck out.*

*... since the issue of cost is discretion of the Court, and still there is a pending appeal which is clearly in connection to this application, if this Court shall deem fit to either*

*completely waive costs to this application and or order the costs to follow in the outcome of the appeal case."*

Since the Counsel of the applicant has conceded that this application is untenable for being disguised execution proceedings in a wrong forum and asked this court to strike it out, I proceed to strike it out off the Court register.

Concerning the issue of costs, as the respondent has incurred costs especially the respondent's counsel has filed submissions thus indicating that he underwent some research and come up with some authorities to maintain the preliminary objection, then the applicant has to bear the costs of the respondent in this application.

It is so ordered.

**DATED** at **SUMBAWANGA** this 22<sup>nd</sup> day of July, 2022



J. F. NKWABI

**JUDGE**