

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOKA DISTRICT REGISTRY

AT BUKOKA

CIVIL CASE NO. 6 OF 2019

**KAGERA EDUCATION PROMOTION CO-OPERATIVE SOCIETY
LIMITED..... PLAINTIFF**

VERSUS

MORITIES CORPORATION LTD1ST DEFENDANT

CRDB BANK PLC.....2ND DEFENDANT

RULING

08/04/2022 & 30/06/2022

E. L. NGIGWANA, J.

The plaintiff, **KAGERA EDUCATION PROMOTION CO-OPERATIVE SOCIETY LIMITED**, an artificial person registered under the Cooperatives Societies Act No.15 of 1991, working for gain in Bukoba Municipality in Kagera Region, by way of plaint, instituted the instant suit against the above defendants praying for the judgment and decree in the following orders;

- (a) A declaration that the plaintiff is a lawful owner of the Suitland.*
- (b) A declaration that the certificate of Title with number 16375; L.O No.218029, Plot No.189 and 190, Block "A" Kiteyagwa Area within Bukoba Township by then is null and void ab initio.*
- (c) A declaration that the registered encumbrance over the Title to wit; a mortgage to the 2nd defendant registered on 10th day of June, 2006 under filed document No.12328 is void hence inoperative.*
- (d) Costs for the suit*

(e) *Any other relief as the Honorable Court may deem fit and just to grant.*

Upon being served with the plaint, the 1st Defendant, a private Limited Company registered under the Companies Act, 2002, operating its business within the United Republic of Tanzania, on 10th June 2021, through the Managing Director, Dr. Anatory John Amani filed an Amended Written Statement of Defence (W.S.D) disputing the claims, therefore, praying for dismissal of the suit with costs.

On the other hand, the 2nd defendant, a Public Limited Company registered under the Companies Act, 2002, operating its business in the United Republic of Tanzania, upon being served with the plaint, through advocate Frank Karoli John from Kabunga & Associates Advocates, on 10th day of July 2019, filed the Written Statement of Defence (W.S.D) disputing all claims wherefore, praying for dismissal of this suit entirely with costs for being frivolous and vexatious.

It was stated in the plaint that on 20/04/2001, the plaintiff legally acquired the Suit land located at Kiteyagwa Area, Kyamuzinga Street, Kagondo Ward within Bukoba Municipality from Asecdo Enterprises Ltd in consideration of 3200 shares, hence a lawful owner of the same.

That Asecdo Enterprises Limited purchased the disputed land from Mr, Edward K. T.Blasio on 21/12/1999 and immediately there upon sought a permit from the Director of Bukoba Town Council, now Bukoba Municipal Council to establish a school in the name of Amani English Medium Primary School.

That, therefore, plaintiff having received the disputed land from Asecdo Enterprises Limited, took over all activities of conducting the school business including processing for permanent registration whereupon the Chairman was registered as the owner as well as the Manager of the School and did employ one Anatory John Amani as the School Chief Supervisor.

That, since then, the plaintiff has been peacefully enjoying stay in the suit land. Recently, during the regularization process of un-surveyed land in the whole area of Kagondo Ward within Bukoba Municipality it appeared to the knowledge of the plaintiff that its land had been surveyed.

That, the plaintiff visited Bukoba Municipal Council Land Offices and confirmed that the disputed land was already surveyed. The plaintiff instructed Fairmax Advocates to make follow up of the matter and they did so. Eventually, the plaintiff received a status of registration of the disputed land to the effect that the same was registered vide Title No.16375 LR Mwanza as Plot No.189 and 190, Block "A" Kiteyagwa Area, Bukoba Township by then and the owner is Morities Corporation Limited (1st defendant) of P.O Box 1586 Bukoba with an encumbrance of Mortgage to CRDB BANK PLC of P.O Box 268 DSM since 10th day of June 2006.

That, the plaintiff conducts its activities through the by-law registered with the Office of the Registrar of Societies on 01/02/2001 and had never resolved to the disposition of the disputed land or transferred ownership of the same to the 1st defendant, and had never authorized of its agents, officer, or director to survey the disputed land in favor of the 1st defendant.

That, the plaintiff finds the acts by the defendants jointly as being a foul game against the plaintiff with a concocted move to deprive the plaintiff's ownership as the record contained in the official search indicates that the registered encumbrance is to secure unspecified loan and the same was registered immediately in eight months from the date of grant of right of occupancy.

That the plaintiff finds this as a foul game since the plaintiff holds an account No. 01J1056309000 with the 2nd defendant at Bukoba Branch in the name of Amani English Medium Primary School and the school used to pay contributions to the National Social Security Fund (NSSF) through the 2nd defendant vide NSSF Account No. 01J1028249431, hence the 2nd defendant cannot allege unawareness regarding the ownership of the suit land.

That, since the survey and grant of title to the 1st defendant was effected through a fraud and falsification of information to Bukoba Municipal Land Offices, it cannot pass title to the 1st defendant and the mortgage transaction between the 1st and 2nd defendants is of no legal effect hence null and void.

On the other hand, the 1st defendant in the W.S.D alleged that, registration of the plaintiff's land in favor of the 1st defendant was done in good faith with the view of enhancing the plaintiff's school projects. That the disputed land was surveyed by a private surveyor who was orally instructed in favor of the plaintiff with a view of obtaining a title Deed which could help to secure loan from financial institutions for the development of the school project, the property of the plaintiff.

That, having surveyed and while the process of registration of the right of occupancy was in progress, it was resolved by the School Board vide its meeting convened on 4th day of May 2004 and deliberated to the effect that there is a need to register the Limited Liability Company and have the surveyed land in favor of the plaintiff registered in its name to simplify the borrowing procedures.

That, the reason why the company had to be established and the disputed land be registered in its name was reached in good faith with the view of avoiding stringent procedures under the Cooperative Societies Act, which requires approval of the Registrar of Societies before the plaintiff could process the loan, the sanctions which could take a considerable period of time or which may be denied hence affecting the prospects and purpose of the loan.

That, the claims by the plaintiff have been overtaken by event as its property cannot be attached or auctioned as the mortgage between the 1st and 2nd defendants has been serviced in full and the property by the plaintiff is free from any encumbrance arising out from the defendants;

The 2nd defendant in its W.S.D alleged that the plot with buildings and buildings of Amani English Medium Primary School are lawfully owned by the 1st defendant and that the 1st defendant procedurally, properly and lawfully mortgaged the same to the 2nd defendant and obtained a loan which had accrued to **TZS. 887,953,300.97/=**. It is further alleged that the shareholders/ members/directors of both Asecdo Enterprises Ltd and those of the plaintiff are either both or some of them are shareholders of the 1st defendant and thus the suit has been designed and concocted by

the 1st Defendant through back door and purposely and thus the suit has been filed in an attempt to delay repayment of the loan advanced to the 1st defendant by the 2nd defendant on which there is a decree of this court reached by consent judgment. That marked the end of the pleadings.

After completion of all preliminaries before my learned brother Hon. Mtulya J, the matter was re-assigned to me on 05/07/2021 following his transfer to another working station. Thereafter, the final -pretrial conference was conducted on 06/10/2021 and the following issues were framed and agreed upon for determination;

- 1. Whether or not the plaintiff has any legal title claimable for the disputed plots of Land Registered in the name of the first defendant.*
- 2. Whether the mortgage by the 1st defendant to the 2nd defendant to secure loan facility was legally justified.*
- 3. Whether or not the 1st defendant has already liquidated the loan facility secured from the 2nd defendant to be entitled for discharge of mortgaged titles.*
- 4. Whether or not the plaintiff and the 1st defendant have conspired and deliberately filed this suit to circumvent the execution process of the High Court Decree entered between by consent in favor of the 2nd defendant.*
- 5. To what reliefs are the parties entitled.*

When the suit was called for hearing, the plaintiff was represented by Mr. Projestus Prosper Mulokozi and Mr. Peter Joseph Matete, both learned advocates from Orbit Attorneys, Dr. Anatory John Amani, Managing

Director, appeared for the defendant while Mr. Aaron Kabunga, learned advocate from Kabunga & Associates Advocates appeared for the 2nd defendant.

In the course of constructing the judgment, I re-visited the pleadings and discovered that there is a crucial legal issue that had not been addressed to by the parties accordingly. The issue arose from the fact that the court had noted from the pleadings the existence of the following facts; **that on 12/06/2018 Morities Corporation Limited**, the 1st defendant in the instant case, instituted a civil case against CRDB Bank PLC, **Civil Case No. 3 of 2018**. The plaint was drawn and filed by Mr. Peter Joseph Matete, learned advocate from **Orbit Attorneys**.

That, on 13/06/2019, the plaintiff, **KAGERA EDUCATION PROMOTION CO-OPERATIVE SOCIETY LIMITED**, through the legal services of Mr. Projestus Prosper Mulokozi, learned advocate from **Orbit Attorneys** instituted the instance case against the defendants challenging among other things, the mortgage by the 1st defendant (their former client in Civil case No. 3 of 2018) to the 2nd defendant (CRDB BANK PLC) to secure loan facility.

In that circumstance, and being guided by the Court of Appeal of Tanzania in the cases; **Zaid Sozy Mziba versus Director of Broad casting, Radio Tanzania Dsm and Another**, Civil Appeal No. 4 of 2001 and **Pan Construction Company and Another versus Chawe Transport Import and Export Co. Ltd**, Civil reference No. 20 of 2006 (Both unreported), I re-opened the proceedings by directing the parties to address me on this issue;

"Whether the plaintiff's learned advocates namely; Peter Joseph Matete and Projestus Prosper Mulokozi, both from Orbit Attorneys, have a conflict of interest and therefore cannot prepare, file and/or appear on record for the plaintiff in the instant case".

Taking the floor, Mr. Frank John, learned advocate for the 2nd defendant submitted that, reading the pleadings and the evidence of Amani Anatory (DW1) who is the Principal Officer of the 1st defendant, it is apparent that Orbit Attorneys represented the 1st defendant who was the plaintiff in Civil case No.3 of 2018 which is substantially related to the instant case or in other words the cause of action in the former case is more or less the same with the cause of action in the instant case, and hence, there is a conflict of interest between Orbit Attorneys and the 1st the first defendant. He further submitted that Orbit Attorneys has no right to represent the plaintiff who is also the Major shareholder of the 1st defendant. To support his position, Mr. Frank referred the court to these cases; **Pravinchandra Girdharlal Chavda versus Vidyadhar G. Chavda [1998] TLR 349** and that case of **Jitesh Jayantilal Ladwa versus Bhavesh Chandulal Ladwa**, Misc. Civil Application No. 101 of 2020. He added that, under the circumstances of this case, the only remedy is to strike out the plaint.

On his side, Mr. Amani Anatory, Principal Officer for the 1st defendant admitted that the first defendant was the plaintiff in civil case No. 3 of 2018 that, it was duly represented by Orbit Attorneys. He added that, in the instant case, the 1st defendant was taken by surprise, as the 1st defendant had never expected that the instant case would have been filed by the plaintiff. He added that the plaintiff was at liberty to choose a firm or an

advocate of its own choice. He added that, the relationship with the 1st defendant and Orbit Attorneys ended with civil case No. 3 of 2018.

On his side, Mr. Peter Matete admitted that in civil case No. 3 of 2018, the plaintiff was Morities **Corporation Ltd**, the 1st defendant in the instant case, and then it had the legal services of Orbit Attorneys. He further argued that, civil case No. 3 of 2018 is distinct from the case at hand in these ways;

One, in civil case No. 3 of 2018, the contentious issue was specific performance of the loan facility while in the case at hand; the contentious issue was ownership of the disputed land which was not at stake in Civil case No 3 of 2018. **Two**, the reliefs sought in two cases are different. The reliefs sought in Civil case No. 3 of 2018 were as follows;

- (a) An order compelling the Defendant(the 2nd defendant in this case) to honor and comply accordingly with single term loan facility letter dated 16th day of May 2018;*
- (b) An order declaring the letter with reference Number 3390/0565247/3611/01 dated 7th day of June, 2018 as being void for breach of contract;*
- (c) An order that recovery measures intended to be carried out by the defendant is over taken by the event given the current loan facility that varied previous letters;*
- (d) An order declaring that the credit period under the current loan facility is to be affected in 108 months and shall expire on 30th June 2027;*

- (e) *A declaration that, given evaluation report conducted by the defendant, the plaintiff and Asecdo Enterprises Ltd have sufficient securities to secure the loan security*
- (f) *An order for payment of General Damages of TZS. **803,938,504.00/=** to the plaintiff for mental agony, distress and embarrassment ;*
- (g) *Costs of the suit*
- (h) *Any other such order or further relief at the discretion of the court.*

While in the instant case, reliefs sought are as follows'

- (a) *A declaration that the plaintiff is a lawful owner of the Suitland;*
- (b) *A declaration that the certificate of Title with number 16375, L.O No. 218029, Plot No. 189 and 190, Block "A" Kiteyagwa Area within Bukoba Township by then is null and void ab initio.*
- (c) *A declaration that the registered encumbrance over the Title to wit; a mortgage to the 2nd defendant registered on 10th day of June, 2006 under filed document No. 12328 is void hence in operative.*
- (d) *Costs for the suit.*
- (e) *Any other relief as the Honorable Court may deem fit and just to grant.*

Three, Civil case No. 3of 2018 was settled amicably out of court and the Deed of settlement was filed and registered as the consent judgment of the court but in the present case, a full trial was conducted, and that it is evident that the two cases are different.

Four, the defendants in the case at hand were the parties in Civil Case No. 3/2018, the 1st defendant being the plaintiff and the 2nd defendant being the defendant, therefore, can now communicate to each other to defend the case at hand.

Five, Orbit attorneys had confidential information about the loan facility which is not at stake in the instant case therefore, there is no fact which can compel the court or any party to this matter to call any officer from Orbit Attorney as witness.

The learned counsel further submitted that a conflict of interest between the client and his/her advocate may only arise where the proceedings or transaction in the former case and the subsequent case are the same. He made reference to the case of **Pravinchandra Girdharlal Chavda versus Vidyadhar G. Chavda (Supra)** to support his argument where the court held among other things that;

"Since Mr. Mkono acted in arbitration proceedings between the two warring brothers, it would be unethical for the same Mr. Mkono to appear subsequently as an advocate for one of the parties in the same dispute before the court".

In the same vein, Matete also referred the court to the case of **Ndali A. Madoti verus Hoseni K. Sumbuguma** [2012] TLR 277 and argued that, an advocate cannot represent a party in a matter which he/she acted as the Commissioner for oaths but the instant case, being different from Civil case No. 3 of 2018, Orbit Attorneys are not prevented from representing the plaintiff.

Mr. Matete ended his submission insisting that there is no any conflict of interest between Orbit Attorneys and the first defendant since the instant case is quite different from the former; Civil Case No.3 of 2018.

Having heard the submissions by the parties, it is now pertinent to determine whether issue raised by the court *suo motu* is meritorious.

The question which is likely to arise in this case is whether the issue of conflict of interest was properly raised at this stage. The answer is not very far to fetch because it has been provided for in these two cases; **One, General Trading Co. Ltd versus Skyesland** [2002] EWCA which was cited with approval by this Court in the case of **Magweiga Munanka Samo and 2 Others versus Aloyce Kisenga Kimbori and Another**, Land Case No.80 of 2017 HC Dsm, where it was held that;

"The court had the power, under inherent powers to prevent abuse of its procedure to restrain an advocate from representing a party if it were satisfied that there was a real risk that his continued participation would lead to a situation where the order made at a trial would be set aside on appeal"

Two, In R. v. Neil (2002) 3 S.C.R.631, 2002 SCC70 where the Supreme Court of Canada held that;

"The conflict should, of course be raised at the earliest practicable stage. If the trial is concluded, may still be raised at the appellate level as a ground to set aside the trial judgment, but the test is more onerous because it is no longer a matter of taking protective steps but of asking for the reversal of a court judgment" (Emphasis added)

In the instant case, the issue of conflict of interest was raised by the court *suo motu* before the judgment is composed and delivered. In other words, it was raised before the determination of the rights and liabilities of the parties, and parties were afforded a fair trial as they were invited to address the court on that issue and they did so. In that respect, the question has been answered in affirmative.

I am alive that in our jurisdiction, the right to representation both in criminal and civil proceedings, is fundamental part of human rights guaranteed **under Article 13 (6) of the Constitution of the United Republic of Tanzania, 1977** as amended from time to time, under the umbrella of the right to a fair trial. I am also alive that, mostly in civil cases, a client has the right to be represented by an advocate of his/her own choice. However, an inevitable question is whether the client's right to choose an advocate of his/her own choice is absolute?

The answer to this question is in the negative. There is a well-settled general rule that a legal practitioner cannot represent a client if the representation, involves a conflict of interest. The principle underlying the ban prohibiting a legal practitioner from appearing from the opposite party against his/her former client is that there is the likelihood of a conflict of interest of the lawyer and also the possibility of misuse of the instructions given to him/her by his/her former client. It is not the question whether misuse has been actually made; the mere possibility of such misuse in a matter which is substantially related or connected with the previous litigation, is sufficient.

It is therefore common knowledge that, it is both the actual and the perception that counts when tracing a conflict of interest in a matter. It is what a reasonable man would conclude while viewing the matter from a distance of that count. **It should also be noted that the old adage that Justice should not only be done, but should manifestly and undoubtedly be seen to be done applies to conflict of interest.**

In our jurisdiction, the law is not silent on the issue of conflict of interest. **The Advocates (Professional Conduct and Etiquette) Regulations, GN. No.118 of 2018**, specifically under Regulation 45 Provides as follows;

45 (1) A conflict of interest is one that would be likely to affect adversely the advocates' judgment or advice on behalf of or loyalty to a client or prospective client.

(2) An advocate shall not act or continue to act in a matter where there is or likely to be at a conflict of interest unless the advocate has the informed consent of each client or prospective client for whom the advocate proposes to act.

In the case of **Lupyana Fredrick Timothy Kaduma versus Samwel Massawe and Another**, Misc. Application No.183 of 2021 my learned Sister, Madame Justice Mgonya J. had this to say;

"It cannot be disputed that a lawyer as an officer of the court has a paramount duty to the court to the proper administration of justice. Lawyers therefore, are required to discharge their duties and advise their respective clients, even if that duty comes into conflict with the interest of

their clients, so as to see that cases are administered respectfully and determined to the end of justice.” (Emphasis added)

In the case of **King Woolen Mills Limited and Galot Industries vs M/S Kaplan and Stratton** Advocates (1993) eKLR the Court of Appeal of Kenya in Civil **Appeal No. 55 of 1993** cited the holding of the court at page 354 in **Rukusens vs Ellis Mundas and Clerke [1912] 1 Cha p 831** thus;

"There is no general rule that a firm of solicitors who had acted for a former client could never hereafter act for another client against the former client, but a firm of solicitors would not be permitted to act for an existing client against a former client if a reasonable man with knowledge of the facts would reasonably anticipate that there was a danger that information gained while acting for the former client would be used against him or there was some degree of likelihood of mischief, i.e of the confidential information imported by the former client being used for the benefit of the new client".

In the case at hand, Mr. Matete has tried to draw the distinction between the case at hand and civil case No. 3 of 2018 by arguing in civil case No. 3 of 2018, the contentious issue was specific performance of the loan facility while in the case at hand, the contentious issue was ownership of the disputed land which was not at stake in Civil case No. 3 of 2018 and that the reliefs sought were also different. That, the conflict of interest can only arise where the proceedings or transaction in the former case and the subsequent case are the same, and in that respect he stood firm that

there is no conflict of interest between Orbit Attorneys and the 1st defendant.

When addressing the court, the principal Officer for the 1st defendant stated that the 1st defendant was surprised by the case at hand as it did not expect that such a case could be filed by the plaintiff against the first defendant. He also argued that the contract with Orbit Attorneys ended with case No. 3 of 2018, and that the plaintiff had the right to choose the advocate of his choice.

Mr. Frank on his side, submitted that the cause of action in the two cases is the same, and that the plaintiff is a major shareholder of the 1st defendant who was represented by Orbit Attorneys, thus the conflict of interest is obvious.

At this juncture I would like to state very clearly that, as a general rule, an advocate who has formally represented a client in a matter shall not **thereafter represent another person in the same matter or a substantially related matter in which that person's interests are materially adverse to the interest of the former client.**

The Supreme Court of India in the case of **V. C. Rangaburai versus D. Gopalan & 4 Others**, 1979 AIR 281, 1979 SCR, 1978 had this to say;

"Counsel's paramount duty is to client; accordingly where he forms an opinion that a conflict of interest exists, his duty is to advise the client that he should engage some other lawyer. It is unprofessional to represent conflicting interests, except by express

consent given by all concerned after a full disclosure of the facts” (Emphasis supplied).

In the case at hand, Peter Joseph Matete from Orbit Attorneys has previously drawn and filed documents and appeared for Morities Corporation Limited (1st Defendant) in Civil case No.3 of 2018 in which the 1st defendant was the plaintiff. In the plaint drawn and filed by Mr. Peter Joseph Matete, learned advocate, it was pleaded that Morities Corporation Limited had legally secured a mortgage loan from the 2nd defendant. However, no evidence was called because the matter was settled out of court and the Deed of Settlement was duly signed by the parties including Advocate Matete, and filed in court on 20/09/2018 and on 1/11/2018, it was recorded as the Consent judgment of the court in the presence Mr. Projestus Mulokozi, learned advocate for the plaintiff, Dr. Amani, Managing Director for the Plaintiff, and Mr. Aaron Kabunga, learned advocate for the defendant.

For easy reference; paragraph 4, 8, and 13 of the plaint, and Paragraph 2, 3 and 8 of the Deed of Settlement, both in respect of Civil Case No. 3 of 2018 read as follows;

PLAINT

4. *" That the plaintiff and the defendant have been in business relationship over time memorial in which the defendant used to advance loan facilities to the plaintiff in various occasions and the cause of action in respect of this matter lies on the loan agreement and facility*

letters of 19th day of May 2008, 10th February 2012 and 27th day of December, 2016”.

- 8. That the plaintiff was supplied with the loan facility for acceptance and he accordingly accepted the offer of the defendant on 28th day of May 2018 through its directors Anatory John Amani and Upendo K. Amani and a certificate of Board of Resolution to Borrow and Give Security was duly signed by the plaintiff and delivered to the defendant”*
- 13. “That since the defendant has lien of all documents, his reason that the plaintiff has failed to execute restructuring documents is unfounded as the same documents were used to secure previous loans and according to the valuation report conducted by an agent of the defendant between the month of January 2017, it was revealed that the market value in all securities stood over Tshs. **2,290,000,000/=**”*

DEED OF SETTLEMENT

- 2. That the loan facility letter duly signed by the Plaintiff and the Defendant ON 28th day of May, 2018 consolidating all loans facilities to a single loan facility amounting to **Tsh.877,795,950/=** has been restored and shall be effective from the date when it was executed by the parties.*
- 3. THAT, pursuant to that loan facility letter in force, the plaintiff shall pay the loan facility loan of **Tshs.877,795,950/=** within or in 108 months which shall be due or which shall expire on 30th June, 2017.*

8. *That the parties further covenant that, the plaintiff is obliged to pay every single installment envisaged in the Loan facility letter dated 28/05/2018, in the event fails to do so, **that will amount or treated as breach of Deed of Settlement and the Defendant will be at Liberty to exercise its powers over the mortgaged properties for recovery of the loan without further notice.***

The mortgaged properties for the loan secured by the first defendant from the 2nd defendant in Civil Case No.3 of 2018 **included Plots No.189 and 190, Block "A" Bukoba Municipality with CT No.16375 LR Mwanza, LO No.218029 in the name of Morities Corporation Ltd (1st defendant).**

The case at hand was filed to by the plaintiff alleging that the mortgage of the herein above plots by the 1st defendant to the 2nd defendant was **void ab initio** because the said property is legally owned by the plaintiff. In the premise, there is no need to wait for angels to descend from Heaven in order to accept the truth that the case at hand is substantially related or connected with Civil Case No. 3 of 2018.

The title deed which is the security for loan in Civil Case No.3 of 2018 between the 1st defendant and the 2nd defendant, the 1st defendant being represented by Orbit Attorneys is what is being claimed by the plaintiff under representation of Orbit Attorneys against their former client (1st defendant).

In that respect, it goes without saying that, both advocates from Orbit Attorneys have gained knowledge of facts in the prior representation that are relevant to the matter in question.

Under the circumstances of this case, neither the learned advocates; Peter Joseph Matete and Projestus Prosper Mulokozi nor their firm namely; Orbit Attorneys can draw, endorse documents for the plaintiff nor argue against the 1st defendant or lead witnesses to testify against the 1st defendant that the mortgage between the 1st defendant and the 2nd defendant involving **Plots No.189 and 190, Block "A" Bukoba Municipality with CT No. 16375 LR Mwanza, LO No. 218029 in the name of Morities Corporation Ltd (1st defendant)** is void.

In the case of **Magweiga Munanka Samo and 2 Others versus Aloyce Kisenga Kimbori and Another**, Land Case No.80 of 2017 HC Dsm, My learned brother Hon. Mlyambina. J addressing the a similar situation had this to say;

"The plaint being drawn filed and endorsed by an advocate and firm who have confidential information against the former client, has improperly brought before the court. To the effect, the plaint is hereby struck out of the record".

The plaint being incompetent for being drawn, endorsed and filed by an advocate with a conflict of interest, I have no any other option except to strike it out as I hereby do. The plaint duly filed in court on 13/06/2019 with respect to Civil Case No. 6 of 2019 is hereby struck out. Since the plaint has been struck out, definitely there will be no judgment except this ruling.

The Plaintiff, if still interested, is at liberty to re-institute a competent suit by way of a new plaint duly drawn and filed in court according to law. In case the plaintiff opts to re-institute a suit against the 1st and 2nd defendants; **which is substantially related with Civil Case No. 3 of 2018**, Mr. Peter Joseph Matete and Projestus Prosper Mulokozi, learned advocates and their firm; Orbit Attorneys are disqualified from representing the plaintiff, otherwise the suit will end up being struck out again on the same grounds. Given to the nature of the case, and the parties to the suit, I order that each party shall bear its own costs. It is so ordered.

Dated at Bukoba this 30th day of June 2022.




E. L. NGIGWANA

JUDGE

30/06/2022

Ruling delivered this 30th day June 2022 in the presence Mr. Eliud Cleophace, Principal Officer of the Plaintiff, Mr. Peter Joseph Matete, learned advocate for the plaintiff, Manase Rajab Mbagha, Principal Officer of the 2nd defendant, Mr. Frank Karoli, learned advocate for the 2nd Defendant, Hon. E. M. Kamaleki, Judge's Law Assistant and Tumaini Hamidu, BC, but in the absence of Dr. Anatory John Amani, Principal Officer of the 1st defendant.




E. L. NGIGWANA

JUDGE

30/06/2022