

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

**DODOMA DISTRICT REGISTRY**

**AT DODOMA**

**MISC. LAND APPLICATION NO. 113 OF 2020**

(Arising from the Judgment of the High Court of Tanzania at Dodoma in Land case No.  
6 of 2012 before Hon. Kalombola, J dated 28<sup>th</sup> December, 2016)

**MAGE NAMGA & 11 OTHERS .....APPLICANTS**

**VERSUS**

**THE GOVERNING BOARD COLLEGE**

**OF BUSSINESS EDUCATION (CBE).....RESPONDENT**

*30/6/2022& 4/7/2022*

**RULING**

**MASAJU, J.**

The Applicants, Mage Namga, Josia Magwira, Juma Shaibu, Charles Maguni@ Mbaryo Videche, Tonoo Lengata, Lucas Mnyamagora, Malugu Mkonde, Janeth Sabe, Eva Matengoo, Esau Chibanda, Yona Mkunza@ Magoda, and Yacobo Chavala filed in the Court a chamber summons Application for extension of time for them to file Notice of appeal in the Court of appeal of Tanzania against the decision of the Court in Land case

No. 6 of 2012 which was decided in favour of the Respondent, the Governing Board, College of Business Education ( CBE) the Application is supported by the Affidavit sworn severally by the Applicants.

The Respondent contests the Application, he filed in the Court a counter Affidavit along with a Notice of preliminary objections, thus;

- i. *" The application is incompetent before the Court for violation of section 6(3) and (4) of the Government Proceedings Act[ Cap 5 RE 2002] as amended by the written law( Miscellaneous Amendment) Act, 2020 GN No.8 Vol 101 dated the 21<sup>st</sup> February, 2020 regarding joining the Attorney General as the necessary party, and*
- ii. *The jurat of attestation of the Applicants' Affidavit is incurably defective"*

When the preliminary points of law were heard in the Court on the 17<sup>th</sup> day of May, 2022 Mr. Sosteness Mseligwa, the learned advocate appeared for the Applicants while the Respondent was represented by Mr. Ambokile Mwakaje, the learned Principal State Attorney.

The Respondent submitted in support of the preliminary points of law that, the Application contravenes section 6(3) (4) of the Government Proceedings Act[ Cap 5] as amended by the written laws [ Miscellaneous amendment] Act of 2020 dated the 21<sup>st</sup> day of February 2020 regarding joining the Attorney General. That, the Application was filed before the Court on the 28<sup>th</sup> day of December, 2020 when the amendments had been made since February 2020. That all suits against the government shall be governed by the Government Proceedings Act which requires the Attorney General to be joined as a necessary party. That, **Celestina Samora Manase & 12 others Vs. Tanzania Social Action Fund & Attorney General** [CAT] Civil Appeal No. 318 of 2019, Dar Es Salaam Registry at page 6-7 defined the word "suit". The Respondent prayed the Application to be struck out of the Court for want of competence.

As regards the 2<sup>nd</sup> preliminary point of law, the Respondent submitted that the Applicants' Jurat of attestation of the Affidavits is incurably defective contrary to the Oaths and Statutory Declaration Act[ Cap 34] at section 10 and the schedule thereto. That, **Changshun Liu V. Rebeka Daudi Mussa and 2 others** ( HC Labour Division ) Miscellaneous Application No. 387 of 2017 gives guidance on the effects

of contravening sections 5 and 10 of the Oaths and Statutory Declaration Act [Cap 34]. That, the Affidavits by the 3<sup>rd</sup>, 8<sup>th</sup> and 10<sup>th</sup> Applicants have not been signed by the said deponents thus there are no Affidavits at all. The Respondents prayed the Application be struck out of Court with costs.

On their part, the Applicants, contested the preliminary points of law by submitting on the 1<sup>st</sup> point of law that, the suit was filed in the Court in 2012 and concluded on the 28<sup>th</sup> day of December 2016. That, the amendment came into force on the 21<sup>st</sup> day of February 2020. That the Application is a continuation of the main suit filed in the Court in 2012, so the Government Proceedings Act should not be brought into play retrospectively. The Applicant otherwise conceded that the Application is a suit.

As regards the 2<sup>nd</sup> preliminary point of law, the Applicant conceded that three Applicants did not sign their Affidavits as Deponents but contested the 1<sup>st</sup> limb of the point by arguing that the format of jurat should not necessary be verified as submitted by the Respondent. That, the Affidavit meets the requirement as to the Deponents sworn /affirmed, the place and date of attestation.

As regards the 1<sup>st</sup> preliminary point of law, the Applicants added that the Attorney General could be made a party to this matter on the intended appeal but not at this stage of Application. The Applicants prayed the Court to dismiss the preliminary point of law for want of merit. The Applicants finalized their submissions by praying that in the event the Court sustains the preliminary point of law they should not be condemned to pay costs because they are financially incapable of paying the costs, if any, against them.

That is what was shared by the parties in support of, and against the preliminary points of law in the Court.

Since the Applicants take no issues with the 2<sup>nd</sup> preliminary point of law that the jurat of attestation of their Affidavits is incurably defective in that the Affidavits by the 3<sup>rd</sup>, 8<sup>th</sup> and 10<sup>th</sup> Applicants namely, Juma Shaibu, Janeth Sebe, and Esau Chibanda respectively were not signed, the said legal error affects the competence of the entire Application, for the said Applicants form part of the Application and they would like to pursue their rights, if any, to Court of Appeal of the United Republic of Tanzania alongside co- Applicants, it is advisable that the Application be struck out of the Court in its entirety so as to afford the said Applicants an opportunity



to be heard alongside their co- Applicants in the event the Applicants still wish to go on with their Application for extension of time to file Notice of Appeal to the Court of Appeal of the United Republic of Tanzania, once more.

That being a case, the Court shall not be detained by reasoning on the 1<sup>st</sup> preliminary point of law raised by the Respondent against the Application .

Thus, the incurably defective Application is hereby struck out of the Court for want of competence. The parties shall bear their own costs accordingly.



GEORGE M MASAJU

**JUDGE**

4/7/2022