

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 19 OF 2022

**(Originating from the Ruling and Drawn Order of the High
Court of Tanzania Main Registry at Dar es Salaam dated 24th
June, 2022 in Miscellaneous Cause No. 12 of 2022 by Hon S.C
Moshi, J).**

ALEXANDER J. BARUNGUZA.....APPLICANT

VS

LAW SCHOOL OF TANZANIA.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

11/8/2022 & 16/08/2022

MZUNA, J.:

The above mentioned applicant filed application before this court seeking for leave to appeal to the Court of Appeal against the ruling of this court which on 24th June, 2022 dismissed his application for being time barred as well as being filed under wrong provisions of the law.

Before hearing of the application could proceed, the applicant who appeared in person and unrepresented, raised a point that he has no confidence in me and therefore I should recuse myself from handling this

case. Reasons advanced being that he was denied some basic rights like the right to have the matter heard in open court. Second that he was denied his claim for human rights violations for reasons that he was told to wait until at the hearing stage. Further that there had been some comments which suggest that I will not be fair to him.

Responding to the above allegations, Mr. Charles Mtae, the learned State Attorney said that issue of recusal is the discretion of the court, all the same he saw no logic on the allegations by the applicant for the reasons that issues of violation of human rights were stated before Hon Moshi J, and had been reported to the police and shall be dealt with by the law enforcing organs.

Second that the court advised parties to stick on what is before the court, that is issue of leave which was a mere advice. On the allegation that the matter should be heard in open court, the applicant was allowed to bring in the chamber court any person with interest to hear the case. It was his view that the advanced reasons cannot justify the prayer for recusal.

I have keenly followed the arguments advanced by both parties. The grounds which can justify a Magistrate or Judge to recuse himself/herself

from presiding over the case are now well settled in view of the decision in the case of **Zabro Pangamaleza v Joackim Kiwaraka & Another** [1987]

TLR 140 (CA) that:-

"Justice must not merely be done, but must be seen to have been done. The safest thing to do for a judicial officer who finds his integrity questioned by litigants or accused persons before him, is to give the benefit of doubt to his irrational accusers and retire from the case unless it is quite clear from the surrounding circumstances and the history of the case that the accused is employing delaying tactics."

It is advisable for one to recuse even if the advanced reasons have no basis save where the court finds that the applicant is employing delaying tactics.

In the case under consideration, the applicant purports to say that he has no confidence in me for reasons which he knows quite sure that have no basis. On the alleged date of mention all parties were fully accommodated in open chamber and of course he was allowed to bring in all those whom he found were interested in this case. In any case, there was no denial to have the matter heard in open court. This is therefore a blatant lie.

On the allegation that there were allegations of violation of human rights, this ground is stated in his affidavit and therefore ought to have been considered during hearing of the application for leave. It is therefore

baseless to say the matter was not given consideration while it was at the mention stage! Similarly, the alleged utterance is a mere advice as well stated by the learned State Attorney. It has no proof of biasness.

The above notwithstanding, for the interest of justice, I see no reason to continue presiding over this case. I hereby withdraw from presiding over this matter. It should be placed before the another honourable Judge as may be reassigned and parties will be notified accordingly. No order as to costs.

By order.



**M. G. MZUNA,
JUDGE.
16/08/2022**