

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA DISTRICT REGISTRY**

**AT MBEYA**

**LAND APPEAL NO. 6 OF 2021**

*(Originating in Application No. 152 of 2019 of the District Land and Housing Tribunal  
for Mbeya)*

*Between*

**CLEMENCE J. MWANGOKA .....APPELLANT**

**VERSUS**

**ANDENDEKISYE MWAKASYOPE .....1<sup>ST</sup> RESPONDENT**

**EDWARD MWAKOGA .....2<sup>ND</sup> RESPONDENT**

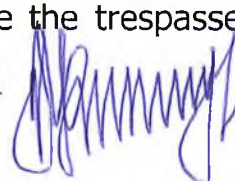
**RULING**

*Date of last order: 5<sup>th</sup> August, 2022*

*Date of judgment: 7<sup>th</sup> September, 2022*

**NGUNYALE, J.**

The appellant, instituted a suit against the respondents and led evidence in *ex-parte* proof thereof, but lost the case before the District Land and Housing Tribunal for Mbeya preceded over by A. Mapunda the Chairman. He sought the declaration that the suit land form part of the estate of Julius Raphael Mwakoga of which the appellant is the custodian, declaration that the respondents are the trespasser, eviction of the 1<sup>st</sup>



respondent in the suit land from the three acres of land located at Imalilo Village, Songwe ward within Mbarali District in Mbeya Region.

The dispute arose from the following background, that the late Julius Raphael Mwakoga owned 19 acres after being allocated by the village council and only three acres had been trespassed in 2014 by the respondents.

The tribunal after hearing the appellant found that he had failed to discharge burden of proof, consequently, dismissed the application aggrieved the appellant has filed memorandum of appeal containing three grounds which as it will become apparently later will not be reproduced here.

When the appeal came on for hearing the appellant was represented by Iman Mbwiga learned advocate. Hearing proceeded *ex-parte* against the respondents after the court satisfying itself that they refused service of summons. Hearing of the appeal took the form of written submission. For purpose of this ruling the submission of the appellant will not be summarised here.

In the course of composing judgment, I note different in names of the appellant as such invited parties to address on whether it was proper for the tribunal to use three names of the appellant interchangeably. The



respondents never appeared before the Court, the appellant had nothing useful to address the court because he was unrepresented.

Having gone through pleadings that is application it came clear that the name of the applicant was **Clemence Julius Mwakoga** as administrator of estate of the late Julius **Raphael Mwakoga**. The proceedings bear the name of **Clemence Julius Mwakoga** as applicant whereas judgment and decree have the name of **Clemence J. Mwangoka**. The appeal is in the name of Clemence J. Mwangoka the name appearing in the judgment and decree.

Having observed it is the law that any suit is instituted by presenting to the court pleadings. Names appearing in the pleadings are those which have to be used through out the proceedings and judgment unless there is change of names communicated to the court or tribunal. This applies even to subsequent proceedings be it an appeal, revision or execution. See the case of **Joseph Magombi vs Tanzania National Parks** (Tanapa), Civil Appeal No. 114 Of 2016, CAT at Dar es Salaam (Unreported) in which it was held that;

*'We think and agree with the Judges in the case of William Godfrey Urassa (supra) that the parties who featured in the initial proceedings should be the same parties featuring before the High Court as well as this Court. We further say, that unless a proper procedure has been followed to change or*

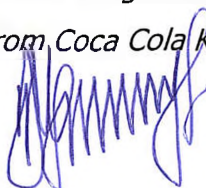


*alter a name, no change of party's name should occur. Nothing convinces us that at any stage of the proceedings in the present situation a change of a party's name was entertained.'*

In this appeal the appellant sued the respondent in representative capacity as the administrator but the status was changed in the proceedings and judgment. Here it has to be noted that the name of Clemence Julius Mwakoga appearing in the proceedings is not the same with that of Clemence J. Mwangoka appearing in the judgment and decree. The use of the names interchangeably illustrated above definitely had an impact on parties' status. Even the appeal filed is affected because names of the appellant does not tally with records of the appeal.

The identified confusion is to my considered view not fatal irregularity and did not occasion any injustice as it can be remedied through rectifying the errors and filing amended memorandum of appeal. On this I find support from the case of **Christina Mrimi v Coca Cola Kwanza Bottlers Ltd**, Civil Application No. 113 of 2011, in which the Court reviewed its earlier decision in the case of **Christina Mrimi v Coca Cola Kwanza Bottles Ltd**, Civil Appeal No. 112 of 2008, the Court held that:

*'The confusion of the name of the respondent is not fatal irregularity, counsel for the applicant contended. Such irregularity is minor and it is curable by deleting the word Bottlers from Coca Cola Kwanza Ltd., counsel*

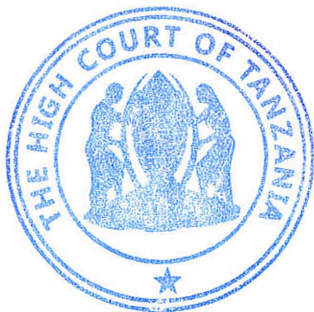


*for the applicant urged, in that Coca Cola Kwanza Ltd, is the only Company which manufactures Sprite, the drink in dispute in the tortuous suit. Hence the correct name of the respondent should be amended to read Coca Cola Kwanza Co. Ltd.'*

See also the case of **Joseph Magombi vs Tanzania National Parks (TANAPA)** (Supra).

For the purpose of meeting substantive justice, I find it more appropriate to invoke application of the overriding objective as per section 3A(1) (2) of the Civil Procedure Code [Cap 33 R. E. 2022 and allow the appellant to apply for reconciliation of names of the appellant as appearing in the application. Having done so, the appellant is allowed to file the amended memorandum of appeal with proper name of the appellant without affecting grounds of appeal. Considering the nature of the rectification I order the same to be done expeditiously within one month from the date of this ruling. It is so ordered.

DATED at MBEYA this 7<sup>th</sup> day of September, 2022



  
**D.P. Ngunyale**  
**Judge**