

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[ARUSHA DISTRICT REGISTRY]

AT ARUSHA

LAND REVISION NO. 09 OF 2022

SERIKALI YA KIJJI CHA MAGONG'.....APPLICANT

VERSUS

CORNEL DESIDERI GABRIEL.....RESPONDENT

RULING

14th & 26th September, 2022

TIGANGA, J.

This is revision application filed by applicant Serikali ya Kijiji cha Mgong' against Cornel Desderi Gabriel. The application requires this court to call for the records of the proceedings, ruling and order made by the District Land and Housing Tribunal of Mbulu at Dongobesh, in Misc. Application No. 28 of 2021, to examine the same on the alleged irregularities of the Proceedings and legality of the ruling and make appropriate orders which includes but not limited to reversing, quashing and setting aside the ruling, orders and such proceedings in the above cited application.

The application was filed under the service of the learned counsel Mr. Omary Gyunda. The said application was by the chamber summons which was supported by an affidavit sworn by one Elisha Herman Ghandu,



who introduced himself as a Principal Officer of the applicant, holding the position of the Village Executive Officer.

The application was opposed by the respondents who did so by filing the counter affidavit sworn the respondent which was drawn and filed under the service of Mr. Abdallah Kilobwa, Advocate, which was followed by the reply to the counter affidavit of the applicant.

On 17th August, 2022 when the case was called for hearing, one Mkama Msalama who introduced himself as a State Attorney from the office of Solicitor General, appeared and told the court that, while in the corridor of this court, he heard the case called which was involving the government. So, he rushed to the chamber where the court was called, and found that the case was being represented by the private Advocate. Mr. Omary Gyunda. He informed the court that in law all cases involving the government are now represented by the office of Solicitor General. Now since their office had no instruction and information regarding this case, he asked for time so that he can go and consult the applicant village and come with the position. That prayer was granted the case was adjourned for up to 14th September, 2022 for orders.

On 14th September, 2022 when the case was called for orders, Mr. Mkama Msalama told the court that, upon communicating with the



applicant's village, they actually agreed that, the application be withdrawn with leave to refile, if they will find that, it is in the interest of justice and Republic to do so. He asked the withdrawal to be without costs.

Mr. Omary Gyunda, Advocate who filed these proceedings objected the prayers made by Mr. Mkama Msalama, State Attorney, He said that he had no information that his client was involved in that consultation.

He submitted that, there are procedural mishap which they call this court to rectify, one of them being fail to join Attorney General.

He said that, since there is a noncompliance of procedure then the court refuse the prayer to withdraw the application instead, it go to the merit of the application and correct such error. The other issue which is an irregularity he raised, is the name of the applicant the Halmashauri ya Kijiji, which was supposed to be sued (The Village Council) as opposed to Serikali ya Kijiji (The Village Government) which was sued.

Given the chance, Mr. Abdallah Kilobwa, learned counsel for the respondent did not object the prayers to withdraw the application.

He further questioned the competence of the application at hand because the Village had no interest at all in the matter substantiate that's



he said who signed as a Principal Officer is not an employee of the Village and has no role in the Village administration.

He said while the matter was before the District Land and Housing Tribunal, involved the District Council Solicitor of Mbulu District Counsel who said the village has no interest in the case.

He said since the application to withdraw has been preferred by the State Attorney who is from the Office of Solicitor General who according law is the one appearing in cases filed by or against the Government then the request be granted. He also prayed the costs to be borne by the person who signed the documents, pretending to be the Village Executive Officer while he was not.

In rejoinder Mr. Mkama Msalama informed the court that in the communication he made with the applicant Village, it was revealed that, the Village did not instruct Mr. Omary Gyunda to file the application at hand neither did not authorize the person who signed the documents which were filed in this application to do so on its behalf. He said both the village government leaders and the District Council said Emmanuel Yacobo who filed this application had personal interest in the matter and he was not standing for the Village. He also said that, there was another



case before Hon. Gwae, J. which has already been withdrawn by the office of Solicitor General because it was by nature similar to this one.

He told the court that, through GN. No. 50 of 2018 the Solicitor General Establishment Order, particularly rule 4 of the said Order direct that, all civil cases of civil nature filed by the Government or against the government at all level of the government are to be manned by the office of Solicitor General.

If there is need to hire an Advocate whether private or otherwise then, the office of Solicitor General is the one responsible.

He said neither the village Council, the District Council or the office of Solicitor General have instructed Mr. Omary Gyunda to file and prosecute this application.

He submitted that, the central Government, independent government departments, government institution and local Governments authorities requires all cases brought under government proceedings Act [Cap 5 R.E 2019] to be represented by State Attorney under the office of Solicitor General.

He asked if the court is in doubt of what he was submitting it may call the village leader and the District Executive Director of Mbulu to come

and clarify in court, but generally he prayed the court to allow the withdraw of the matter without costs.

While rejoining on the new raised issues in the submission made by Mr. Abdallah Kilobwa, Mr. Omary Gyunda, submitted that, the village has interest in the case. He said the Village has never been represented by the District Council Solicitor as alleged by Mr. Kilobwa.

He insisted that, the procedure of suing the village was not followed, he prayed the court to revise the decision of Mbulu District Land and Housing Tribunal which has some errors he has pointed out.

That marked the submission by the parties, hence this ruling.

Now gathering from the pleadings and the submissions made by parties representatives, I find this to be a peculiar case. I find so because the applicant is seemingly represented by two learned fellow each of whom has different and opposite instruction from the same client.

While the learned State Attorney Mr. Mkama Msalama, has instruction to withdraw the case purportedly to have acquired such instruction from the applicant. Mr. Omary Gyunda has instruction to proceed with hearing of the same case also purportedly from the same client who instructed Mr. Mkama Msalama to withdraw the application.



By simple logic , this cannot be the same client, logic and reasoning dictates the conclusion that, the client from whom/which Mr. Mkama Msalama has obtained the instruction, is different from the one who instructed Mr. Omary Gyunda to proceed with the hearing of the case.

It is unfortunately that both counsel have not given this court the benefit of availing their respective clients here in court. That being the case then the court needs to be guided by the law in determining this matter.

From the submissions by the parties, they all agree that the applicant the village authority is not an individual, but one of the Government entity which can sue and be sued.

The Government Proceedings Act [Cap 5 R.E 2019] Section 6A provides that all cases against the government which includes the central government, the Ministry, the government departments and local government authority at all level, along with the Attorney General in all cases shall be represented by the Solicitor General who will be the one appearing in court.

In this case, the applicant is a local government established under section 25 and 26 of the Local Government (District Authorities) Act Cap 287 of the laws, names the Village Council as the entity, of the



Government capable to sue or be sued. Now being the Government department or entity the procedure of suing the same then is similar to that of sue any other Government department Under the office of Solicitor General establishment Order (supra) as cited by Mr. Mkalama Msalama, it is the Solicitor General who has locus stand to stand and represent the Government, any other engaged private Advocate must be engaged with knowledge and consent of the Solicitor General. That being the case of as between Mr. Mkama Msalama, State Attorney and Omary Gyunda, private Advocate, the one with locus stand is Mr. Mkama Msalama. For that reason, he is the one to listen.

Basing on the above legal standing. I find the prayers to embrace is that given by Mr. Mkama Msalama who asks to withdraw the application. In consequence therefore, his prayers is granted, the case is marked withdrawn with leave to refile as requested by Mr. Mkama Msalama, State Attorney.

Regarding the issue of costs. Given the circumstances of the case, and since the person who is said to have sworn the affidavit has not been bought, then each party shall bear own costs.

A handwritten signature in blue ink, appearing to be 'D. M. M.', is written in a cursive style.

It is accordingly ordered.

DATED at **ARUSHA**, this 26th this day of September, 2022.



JUDGE