

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 543 OF 2019

(Arising from Petition Case No. 13 of 2014 Ulanga District Court)

KIWALE VILLAGE COUNCIL.....APPLICANT

VERSUS

IGAWA VILLAGE COUNCIL1st RESPONDENT

EXECUTIVE DIRECTOR

ULANGA DISTRICT COUNCIL 2nd RESPONDENT

RULING

19/8/2021 & 16/8/2022

S.M. KULITA, J.

This is an application for Revision lodged by the Applicant herein. It originates from the Petition Case No. 13 of 2014 Ulanga District Court in which the 1st Respondent herein was the Petitioner while the 2nd Respondent was the Respondent.

Briefly the historical background of the matter as it can be gathered from the record is that the 1st Respondent, Igawa Village Council alleged that in establishing the new villages and hamlets within Ulanga District in Morogoro Region, the 2nd Respondent, the Executive Director Ulanga District Council, unlawfully and without consulting the 1st Respondent for consent, decided to take Ngadula hamlet from Igawa Village (1st Respondent) to Kiwale Village (Applicant), the act which is contrary to the procedural requirements.

Upon the matter been heard at Ulanga District Court it was decided that the process that had been followed in placing Ngadula hamlet into Kiwale Village (Applicant herein) from Igawa Village (1st Respondent herein) was un-procedural. Hence, nullified the said notice and substituted with an order that, within six months period from the date of its decision, 17th April, 2015, the Executive Director Ulanga District Council (2nd Respondent herein) had to rectify the noticed faults before establishing Ngadula hamlet as part of Kiwale Village.

The Applicant had to file this application for Revision instead of appeal as she was not a party in the original case. The matter was argued by way of written submissions. The Applicant is represented by one Jacksoni Huberti Ng'ombiyaveni of Igawa. The

1st Respondent is represented by the Learned Counsel, January Kambamwene, Advocate while the 2nd Respondent is represented by Ms. Subilaga Tumwimbilege Msyani, the District Solicitor.

In his written submission in support of the application, the Applicant through Mr. Jackson Huberti Ng'ombiyaveni submitted that the Applicant herein, Kiwale Village Council, had never been involved in this matter when it was entertained at the District Court while the same has an interest on it. He submitted that it was wrong for the trial court to proceed with the matter in the absence of the Applicant while part of its area, that is Ngadula hamlet was subject to be taken into the geographical/territorial jurisdiction of Igawa Village Council.

Mr. Jackson Huberti Ng'ombiyaveni further submitted that the Applicant's right to be heard was infringed. He also condemned the procedure that had been adopted by the District Council to transfer the territorial jurisdiction of Ngadula hamlet to Kiwale Village Council from Igawa Village Council that it was wrong.

He concluded by praying for the Application to be allowed, and the proceedings of the trial court be quashed and its decision set aside.

In the reply thereto Advocate for the 1st Appellant, Mr. January Kambamwene submitted for the matters of which I find not useful in determination of this matter, rather they just intend to attack the application as the preliminary objection of which I also find to have no merit. However, the counsel concluded by praying this application be struck out with costs.

Ms. Subilaga Tumwimbilege Msyani, the District Solicitor who represents the 2nd Respondent, Executive Director Ulanga District Council conceded with the fault of non-joinder of the necessary party, Kiwale Village Council (the applicant herein) at the trial court. She is of the opinion that the applicant herein has been directly affected with the judgment whose execution cannot be effected without involving her. Hence, it was mandatory for Kiwale Village Council, the Applicant, to be joined in the Petition Case No. 13 of 2014 Ulanga District Court.

The Counsel added that at the trial court, the 1st Respondent had been represented by a wrong person. She said that, it is the Solicitor from the 2nd Respondent's office who has a locus to represent her in court. She added that, position is the same even for the 1st Respondent who appeared at High Court through a private Advocate, Mr. Kambamwene, and individuals during trial at the at the District Court.

In my analysis on this matter, I prefer to start with the competence of the original case, Petition Case No. 13 of 2014 Ulanga District Court, from which this application for Revision arises.

In my perusal over the original case file, particularly the Applicant's pleading which is a "**Petition**", I have noted that the said document has been signed by the so called "**Petitioner**" while the petitioner in that said case (Igawa Village Council) was not a natural person but the administrative authority under the local Government. Under that situation the person who filed the Petitioner before the court ought to have mentioned the post that he holds in that institution/authority. Otherwise the issue of locus to sue by that person who just signed the pleading as a Petitioner without mentioning his official status nor his/her name becomes questionable. This is what happened in this matter, though it was not objected by the opponent during trial.

Another fault that I have noticed in the original record is that even the persons who turned up to the trial court for testimony, they just testified as individuals, not officers from the Petitioner (Igawa Village Council) nor persons authorized by the Petitioner to represent her for that case.

I can agree with Ms. Subilaga Tumwimbilege Msyani, the District Solicitor who represents the 2nd Respondent, Executive Director Ulanga District Council that the Village Council's act of suing the District Counsel (Executive Director Ulanga District Council) is unjustifiable. The reason behind according to her is that, basically the Village Councils are under the District Councils in which they are located, and in case of litigation before the court involving the District or the Village Council, they are used to be represented by the same person, District Solicitor. In my view, in case of conflict between the Village Councils, or the Village Council and the District Council, there must be another venue for resolving it rather than placing them at the ordinary courts of law, like the District Courts. Without hitting into the bush, I find the original case tainted with doubts if the same was lawfully filed at the District Court.

In the event, I am inclined to exercise the revisionary jurisdiction vested to this Court under **Section 44(1)(b) of the Magistrate Court Act [Cap 11 RE 2019]** which provides to the High Court powers to make revision over the matters decided by the Resident Magistrate's Courts and the District Courts for the

purposes of rectifying errors necessary in the interest of justice. Upon invoking the said provision, I hereby **strike out** the Petition Case No. 13 of 2014 Ulanga District Court. Having considered the circumstances of the case, I make no order as to costs.



S.M. KULITA
JUDGE
16/08/2022

