

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO**

MISC LAND APPLICATION NO. 04 OF 2021


(Arising from the decision of the District Land and Housing Tribunal for Morogoro in Misc.
Land Application No. 124 of 2019 & Misc. Land Application No 116 of 2014)

1. SHAFII ABDALLAH MOHAMED
2. OMARY SALUM MBEZI
3. HAMIS KILONGO
4. JUMA SALUM KIPERA
5. HUSSEIN S. TEMBO
6. SAMBI MISAMA
7. MWANAIDI KASSIM NASSORO **APPLICANTS**
8. EDSON PETER
9. MICHAEL PETER MAPUNDA
10. ABDUL R. SIARA
11. OMARY SHAABAN
12. ABDUL R SIARA (As an Administrator
of estate of **FATUMA SAID**)
VERSUS
BACHOO SADIK BACHOO **RESPONDENT**

RULING

S. M KALUNDE, J.

This ruling resolves two preliminary objections on point of law raised by the respondent. The points of objection raised are as follows:

1. That, this Court lacks jurisdiction to entertain; and
2. That, the affidavit supporting the application is defective for containing a defective jurat of attestation. 

By the consent of the parties, hearing of preliminary objections was disposed by way of written submission. Submissions of the respondent were drawn and filed by learned counsel MR. ABDUL ALLY BWANGA whilst those of the applicant were filed by MR. EDSON KILATU, learned advocate. Submissions were dully filed hence this ruling.

I have carefully examined the record and the written submissions advanced by the counsel for the parties for and against the preliminary objection, the main issue for my determination is whether the objection raised is meritorious. I propose to start with the first limb of the preliminary objection.

In the first limb of the objection, it is Mr. Bwanga contention that the inclusion of ABDUL R SIARA as an Administrator of estate of FATUMA SAID, the 12th applicant rendered the application incompetent as the said applicant was not part to the proceedings before the tribunal. In his view the inclusion of the 12th applicant who was not party to either Misc. Land Application No. 124 of 2019 or Misc. Land Application No 116 of 2014 at the tribunal rendered the present application incompetent as it is new and thus ousting jurisdiction of the Court.

Responding to the above argument, Mr. Kilatu seem to have acknowledged that the inclusion of the 12th applicant rendered the application incompetent. However, he maintained that the effect of the inclusion was not the dismissal of the application but rather the Court should strike out the application so as to allow the applicant to file competent application.

From the records in the present application, there is no flicker of doubt that the chamber summons as well as the affidavit filed in support

of the application has indicated a wrong party to the case. I have looked at the ruling order in Misc. Land Application No. 124 of 2019. The parties in the said ruling are the same to those appearing in the drawn order issued by the tribunal. I have gleaned in the said decision and found no order issued by the tribunal allowing the replacement of FATUMA SAID by one ABDUL R. SIARA as an administrator of her estate. I am also aware that this Court has not issued a similar order. It is therefore clear that the current 12th applicant was not a party to the proceedings sought to be challenged. In my considered view citing the 12th applicant in the relevant documents without leave or an order of the court is a fatal irregularity which has affected the competence of the entire application.

The importance of including original parties in an appeal or application was recently emphasised by the Court of Appeal in the case of **CRDB BANK PLC (FORMERLY CRDB (1996) LTD) vs. GEORGE MATHEW KILINDU**, CIVIL APPEAL NO. 110 OF 2017 where the Court (**Kerefu J.A**) at page 11 stated:

*"We wish to emphasize that the issue of names of parties to the case is central for their identification. The right of appeal is for the parties who have been involved in the original suit and not any other person. This was also the position in the cases of **Attorney General v. Maalim Kadau & 16 Others** [1997] TLR 69 and **Jaluma General Supplies Ltd v. Stanbic Bank (T) Ltd**, Civil Appeal No. 34 of 2010 (unreported) and **Inter - Consult Limited** (supra). Specifically, in the former case the Court stated that: -*

"...any of the parties involved in the original suit and not any other person, can appeal... Names of parties is central to their identification in litigation. Both parties are limited liability companies"

with all their attributes. If one changes its name, it becomes a different legal entity, altogether. Consequently, the name of the appellant in the Notice of Appeal was fundamentally different from that in the plaint. It was fatally different from that in the plaint. It was fatal irregularity rendering the Notice of Appeal incompetent."

Having pronounced as such, the Court observed that that the appellant has cited a wrong party to the original case the Court at page 12 concluded that:

"In the circumstances, we sustain the point of objection raised by the respondent in the second set of the preliminary objections. We thus find the notice of appeal bearing the name of a stranger invalid and has rendered the entire appeal incompetent liable to be struck out."

Guided by the above authority I am satisfied that the name of the 12th applicant was different from the name of the applicant in the present application. The right to appeal or file an application for that matter in any case is accorded to any of the parties involved in the original suit and not any other person. If the administrator of the estate wishes to protect or pursue the interests of rights of the deceased, he has to do so within the ambits of the law. He cannot decide to do so unilaterally by including his name in the proceedings and doing so without leave or order of the Court. The inclusion of the 12th applicant was, therefore, a fatal irregularity which rendered the application incompetent.

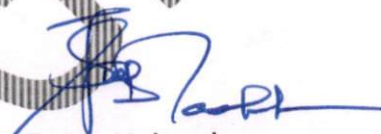
That said, I sustain the first point of preliminary objection raised by the respondent herein. In the circumstances, it is the finding of this Court that the application bearing the name of the 12th applicant, a stranger to the original records, is invalid. In my considered view, the effect of including a stranger to the application rendered the entire application incompetent. The only remedy available is to have it struck out, which I hereby do. Since this is sufficient to dispose of the matter, I see the no need to consider the remaining point of objection raised by the respondent.

In the event and for the foregoing reasons, the incompetent application is hereby struck out with costs.

It is so ordered

DATED at MORORORO this 23RD day of NOVEMBER, 2022.




S. M. Kalunde

JUDGE