

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

MISC. CIVIL APPLICATION NO. 15 OF 2022

(Arising from Civil Case No. 4 of 2022 in the High Court of Tanzania at Mwanza)

LADISLAUS MICHAEL SWAI.....1ST APPLICANT

BLASIUS MICHEAL SWAI.....2ND APPLICANT

VERSUS

SAFINA SHABAN BYAMBWENU.....RESPONDENT

R U L I N G

14th April & 2nd May, 2022

DYANSOBERA, J.:

In this application, the court is being moved by way of a Chamber summons supported by a joint affidavit sworn by Ladislaus Michael Swai and Blasius Michael Swai, the applicants, for an order for leave to appear and defendant in Civil Case No. 4 of 2022 filed in this court on 11th day of January, 2022 under summary proceedings.

It is on record that after the respondent filed his counter affidavit, the applicants filed a joint rejoinder-affidavit titled in Kiswahili, '*Majibu ya pamoja ya kiapo kinzani cha mjibu maombi*'. The filing of this rejoinder-counter affidavit has prompted the learned Counsel for the respondent,

Mr. Inhard E. Mushongi, to react by objecting to it. According to him, there is no law sanctioning the filing of such a document and that even if no such law existed, still the applicants were duty bound to first seek leave of the court to file the same as it could not be filed automatically. He contended that this document is improperly before the court and in record and should, therefore, be expunged.

In his reply, Mr. Alex Richard Lwoga, learned Advocate for the applicants countered this objection arguing that the advocate for the respondent has not stated which law bars the filing of rejoinder-counter affidavit. That the same rejoinder affidavit has not asserted a new thing and that the receipt of it will not occasion any failure of justice.

In rebuttal, Mr. Mushongi insisted that the rejoinder affidavit is improperly before the court and that if the applicants wanted to file it they had to first seek and obtain leave of the court, the fact they have not done.

I have considered the rival arguments of the Counsel for the parties. In situations like the present, the question to be asked and determined is when can the pleadings under the law that is, the Civil Procedure Code [Cap. 33. R.E.2019], be deemed to have been complete. In my view and

as far as this matter is concerned, the pleading is deemed to have been complete when the respondent files a counter affidavit.

The court, however, in exercise of its discretionary powers and in a proper case, is empowered to grant leave for the filing of a subsequent pleading so as to allow a party to furnish clarification regarding additional facts or issues that may have been raised by the opposite party in his pleading in order to project his correct position. This, I think, is the *raison d'être* of the provisions of Order VIII rule 13 read together with rule 1 of Order VI of the Civil Procedure Code (*supra*).

In other words, the applicant can only file a rejoinder-counter affidavit in any of the following circumstances: one, when required by the law and two, when the court grants him leave to file the same. Besides these two situations, the applicant cannot file a rejoinder-counter affidavit as a matter of right.

In the instant application, the applicants have not stated the law which permitted them to file a rejoinder-counter affidavit nor did they seek and obtain leave of this court to file the same. In that respect, the argument by Mr. Inhard E. Mushongi that the rejoinder-counter affidavit has been filed against the law and is improperly in court has merit.

In consequence, I uphold the objection raised by learned Counsel for the respondent and expunge the applicants' *'Majibu ya pamoja ya kiapo kinzani cha mjibu maombi'* from the record.

Order accordingly.



W.P. Dyansobera
Judge
2.5.2022

This ruling is delivered under my hand and the seal of this Court on this 2nd day of May, 2022 in the presence of Mr. Alex Richard Lwoga, learned Advocate for the applicants and Mr. Inhard E. Mushongi, learned Counsel for the respondent.



W.P. Dyansobera
Judge