

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR-ES-SALAAM DISTRICT REGISTRY)**

**AT DAR-ES-SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 460 OF 2022**

(Arising from Civil Case No. 186 of 2019)

**NIMROD ELIREHEEMAH MKONO ..... APPLICANT**

**VERSUS**

**THE BOARD OF TRUSTEES OF**

**THE NATIONAL SOCIAL SECURITY FUND ..... 1<sup>st</sup> RESPONDENT**

**MKONO & CO. ADVOCATES ..... 2<sup>nd</sup> RESPONDENT**

**WILBERT BASILOUS LIYOYA KAPINGA ..... 3<sup>rd</sup> RESPONDENT**

**RULING**

Date: 23/02 & 03/03/2023

**NKWABI, J.:**

The Applicant has brought this application mainly for an order staying the proceedings in Civil Case No. 186 of 2019. The chamber summons in this application is preferred under the provisions of section 68(e) and 95 of the Civil Procedure Code, Cap. 33 R.E. 2019. The following orders are sought by the applicant:

1. That this honourable Court be pleased to issue an order for stay of proceeding in Civil Case No. 186 of 2019 pending in this Honourable Court until the determination of the intended appeal to the Court of Appeal of Tanzania instituted by the Applicant against the Respondent

challenging the decision of the High Court of Tanzania at Dar-es-Salaam (Honourable Madam Justice Masabo, J.) dated 23<sup>rd</sup> September 2022 in Misc. Civil Application No. 193 of 2022 which struck out an Application to join the Applicant's daughter one Lea Midala Mkono to Civil Case No. 186 of 2019 and allowing her to set aside the summary judgment and defend the claims against her sick father ( a person with mental disorder).

2. Costs of the application be borne by the respondents; and
3. Any other or further relief(s) as this Honourable Court shall deem fit to grant.

The application was duly resisted by the 1<sup>st</sup> respondent which filed the counter-affidavit. The rest of the respondents did not file any counter-affidavit. There is an affidavit of service in respect of the 3<sup>rd</sup> respondent. The 2<sup>nd</sup> respondent could not resist maybe because it is a Law firm of the applicant.

I directed the application be argued by way of written submissions. The applicant and the 1<sup>st</sup> respondent filed their submissions. Mr. Roman S.L. Masumbuko, learned counsel submitted for the applicant while Mr. Frank

Mgeta, learned State Attorney filed the reply submission for the 1<sup>st</sup> respondent.

In submission on the merit of this application, the counsel for the 1<sup>st</sup> respondent raised a concern that the application (deponent) is playing delaying tactic and is abusing the process of the Court for reasons that the applicant appeared in court on 06/08/2020 on Land case No. 09 of 2020 HC. He insisted that the successful party should be allowed to enjoy the fruits of his judgment while staying the proceedings will result to substantial loss to the 1<sup>st</sup> respondent.

In rejoinder submission, the counsel for the applicant indicates that the applicant was adjudged by this Court to have no locus standi to the case, now she is appealing against that decision which has direct effect to the main suit. It was maintained that how can the 1<sup>st</sup> respondent's advocate argue that it is an abuse of the court process and delaying tactics? It was stressed, the deponent is exercising her right for a fair hearing, her right to appeal against the concerned decision.

I have carefully considered the complaint by the counsel for the 1<sup>st</sup> respondent and I am of the view that his complaint is genuine and should

be supported by this Court. This application is not only a delaying tactic but also an abuse of the Court process. This Court adjudged the applicant (deponent) as a person not having locus standi in Civil Case No.186 of 2019, thus, in my view, she cannot have the locus standi to bring this application in this Court unless that decision is overturned by a superior Court than this Court. The applicant ought to have known that, therefore, it is an abuse of the Court process. It is a delaying tactic since if the application is granted, then Civil Case No. 186 of 2019 will not proceed, bad enough the Court is moved by the person who has been ruled by this very Court to have no locus standi. That ruling, affects the standing of the applicant in this Application. One could have reference, though said in a different scenario to **East African Development Bank v. Blueline Enterprises Limited**, Civil Appeal No. 101 of 2009 at page 15 where it was observed that:

*"After the dismissal the appellant went back to the same court (Sheikh, J.) and filed an application for extension of time similar to the one which was earlier marked withdrawn! Surely, by the above sequence of events the appellant exhibited what we may safely term as "forum shopping." This was no doubt, an abuse of court process."*

That said and done, this application is bound to be struck out with costs for being an abuse of the Court process. In the circumstances, I do not need to consider the merits of this application because it will be a futile exercise. Further since the health status of Nimrod Elireheemah Mkono is contested in the Court of Appeal in the said appeal, I do not think it is proper to comment on the same in this application.

It is so ordered.

**DATED** at **DAR-ES-SALAAM** this 3<sup>rd</sup> day of March, 2023



A handwritten signature in blue ink, appearing to read "J. F. Nkwabi".

J. F. NKWABI

**JUDGE**