

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

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

MISC CIVIL APPLICATION NO. 405 OF 2020

(Originating from Civil Case No 269 of 1996)

CRDB (1996) LIMITED APPLICANT

VERSUS

**1. GEORGY MPELI KILINDU (As administrator
of Georgy Mathew Kilindu)..... 1ST RESPONDENT**

**2. ANNE SUBILAGA KILINDU (As administrator
of Georgy Mathew Kilindu 2ND RESPONDENT**

RULING

12th Dec 2022 & 17th Febr,2023

MKWIZU, J:

The chamber summons by the applicant has the following prayer that this court is called upon to grant:

- a) That the honourable court be pleased to amend and correct the decree delivered by the Honourable trial judge Muruke J in civil case No 296 of 1996
- b) That the honourable court be pleased to order costs to be provided to
- c) That Honourable court grants any relief it may deem fit to grant.

The application is as usual supported by the affidavit in which several grounds are deposed on why the application should be allowed. The application is opposed by the Respondent who apart from filing their counter affidavit, they filed a notice of preliminary objection containing two points to wit:

1. That the Court has no jurisdiction for being improperly moved with wrong provisions of the law
2. That the application is incompetent and unmaintainable for being preferred by a non-existing party.

The application was, by an order of this court disposed of by way of written submissions. The respondent counsel opted to abandon his first preliminary objection, and this was so expressed in his written submissions filed in court on 29/12/2022. Submitting in support of the second P/o, the respondent's counsel said the application has been filed by a non-existing entity incapable of instituting a suit in a court of law. His contention was that it is evident from the counter affidavit that Applicant has changed its name to CRDB Bank PLC and that there is no entity existing in the name of the CRDB (1996) Limited.

Relying on the provisions of section 31(3) and (4) of the Companies Act, Act No 12 of 2002, Mr. Fraterine Munale said, the company that changes its name is duty bound to notify the Registrar of the Company to issue a certificate of the change of the name without affecting the rights and obligations of the Company with the new name or render defective any legal proceedings by or against the company. To him, having changed the name to that of CRDB Bank PLC the applicant's former name ceased to have legal personality and was therefore incapable of taking any legal

action. To bolster his position, he referred the court to *Jaluma General Supplies Ltd v Stanbic Bank (T) Ltd* Civil Appeal No 34 of 2010 (Unreported) where the issue of the name of the parties was considered a key when it comes to parties' identification in litigation. He informed the court of Appeal in Civil Appeal No 110 of 2017, *CRDB Bank PLC (Formerly CRDB(1996)ltd) V Gerorgy Mathew Kilindu* has directed the applicants the procedure on how to apply for the use of the new name, the procedure which she has not complied with. He lastly urged the court to strike out the application with costs.

Maintaining the Respondent's position, Mr. Mugisha Mboneka counsel for the applicant was to the point that the change of the name by the Company under section 31 (3) of the Company's Act, does not go with the rights and liabilities of the old company. To him, the impact of changing the company's name is provided for under section 31(4) of the Companies Act with specific provisions maintaining the status of the old company after the change of the name without affecting any legal proceedings commenced before the effected changes. He invited the court to construe the word "*May*" used in section 31(4) to mean that the applicant has the discretion either to use either the former name or the new one in the court proceedings. This point was supported by the provisions of section 53 of the Laws of Interpretation Act(Cap 1 RE 2019). He insisted on the competency of the application with an invitation to overrule the objection or alternatively, the sustaining of the objection should be with a fourteen days' leave for the applicant to file another application.

In his short rejoinder, Mr. Fraterine urged the court to find that there is an express admission of the change of the applicant's name from the

Applicant's counsel submissions which confirms their point that the applicant is a non-existing entity capable of filing the present legal proceedings in court. The case of **Change Tanzania Limited Vs Registrar of Business Registration and Licensing Agency**, Misc. Commercial Case No 27 of 2019 High Court(Unreported) was cited on the point. The respondent was of the view that the current application is not one of the contemplated proceedings under section 31(4) for it is a new application filed after the change of name.

I have considered the rival submissions by the parties. At least the parties are not disputing the fact that the applicant has changed its name of CRDB (1996)Limited replacing it with that of CRDB Bank PLC. In other words, the company that was formally known as CRDB (1996) limited had renounced its name to the new name introduced above...

What happened is a long story that can be summarized here for clarity and a better understanding of the matter. The Respondents had in 1996 filed a civil proceeding against the applicant in which the plaintiff won. It is on the Applicant's submissions that during the pendency of the matter in court, on 28/7/2007, the applicant changed her name, and therefore at the delivery of the judgment, that is on 30th December 2016, the Applicant (the Judgment debtor) was no longer known by its former CRDB (1996) limited but rather by her new name CRDB Bank PLC. In an attempt to challenge the high court decision, the applicant filed an appeal to the Court of Appeal which was registered as Civil Appeal No110/2017 titling herself CRDB Bank PLC (formerly CRDB(1996) ltd). Having on their records the trial court's proceedings designating the applicant as CRDB (1996) limited, the court of appeal struck out the appeal for being incompetent stating that the citing of the new names by the Appellant

without leave or an order of the court is a fatal irregularity affecting the competence of the entire appeal. Hurriedly, in her effort to rectify the error, the applicant came to this court with this application which was as well hailed with the explained objection above the subject of this ruling.

I have given the point a thorough scrutiny. The point for consideration is whether the point of objection raised is merited or not. As rightly submitted to by the parties' counsel, sections 31(3) and 4) of the Companies act allow a company to change its name without affecting its rights and obligations. The sections are coached thus:

*"31 (3) Where a **company changes its name** under this section, **it shall within fourteen days give to the Registrar notice thereof and the Registrar shall, subject to the provisions of section 30(2), enter the new name on the register in place of the former name, and shall issue to the company a certificate of change of name, and shall notify such change of name in the Gazette.***

*(4) A change of name by a company under this section shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and **any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.**"*

(Emphasis added)

After notification as to the change of names under subsection 3 of section 31 above, the company's new name is registered in place of its former

name followed by the issuance of the certificate of change of name by the Registrar of companies which is also gazetted. Subsection 4 is more on the implications of the certification of the change of the name by a company. Plainly interpreted, the subsection endorses that certificate declaring the change of name does in no way affect the existence of the company. It is a baptism that retains all assets, liabilities, and obligations of the company.

The Applicants counsel has in his submissions tried to convince the court that section 31(4) gives the applicant option when it comes to legal proceedings either to continue the suit instituted before the change of the name with the former name or shift to a new name. That is the position, but the section covers the existing proceedings at the time of the change of the name. It does not extend to the proceedings instituted thereafter. That is why, I think it was possible for the civil Case No 296 of 1996, to survive to its finality in 2016 in its old name. Meaning that, a company cannot commence a legal proceeding in its former name post the process of change of name.

As admitted by the applicant's counsel, the applicant changed its name way back in 2007. It is therefore my considered view that coming to court in 2020 with the old name contravenes even the provisions of the Company law.

It is elemental that to have a valid legal action before the court, parties must have an actual legal existence. The court in **Waswa Primo v Moulders Limited**, Miscellaneous Application No. 685 of 2017(Unreported) had once said:

*"A suit filed by a non-entity is no suit at all as in the words of Templeton in the **Fort Hall Bakery Supply Company v Fredrick***

Muigai Wangoe (1959) EA 474, a non-existent person cannot sue and once the court is made aware that the plaintiff is non-existent, and therefore incapable of maintaining an action it cannot allow the action to proceed....."(Emphasis added)

See also the case of **CocaCola Kwanza LTD v Peter John Mkenda**, Civil Appeal No 111 of 2017 (unreported). The applicant is certainly a nonexisting entity, incapable of maintaining an action before a court of law.

For the foregoing reasons, I find the preliminary point of objection worth sustaining resulting in an order striking out the application with costs. It is so ordered.



E. Y Mkwizu

Judge

17th February 2023

