

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 34 OF 2023

BETWEEN

ALEXANDER J. BARUNGUZAAPPLICANT

VERSUS

LAW SCHOOL OF TANZANIA.....1ST RESPONDENT

HON. JUDGE DR. BENHAJI SHAABAN MASOUD.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

12/09/2023 & 21/09/2023

KAGOMBA, J.

By way of a chamber summons made under rule 17 of the Judicature and Application of Laws (Remote Proceedings and Electronic Recording) Rules, 2021 (GN No. 637 of 2021) ("the Rules"), the applicant seeks court order to allow audio-visual recording of the proceedings in a constitutional matter registered as Misc. Civil Cause No. 1 of 2023 involving same parties as herein, which is pending before this court. He also prays for costs.

The affidavit sworn by the applicant provides the background to this application, and acknowledges the progress made by the Judiciary in strengthening its ICT capacity, which account for the applicant's optimism that the order he craves for is grantable. The applicant also expresses his



readiness to use his own electronic equipment if the court's equipment will not be available when needed.

During hearing of the application, the applicant appeared in person whereas the respondents were represented by Mr. Stanley Kalokola, learned State Attorney.

In his oral submission, the applicant reiterated the averments contained in his affidavit. According to him, the public will have interest to know what is going on in court concerning the complaints aired against the first respondent herein. He told the court that he wished to have the proceedings recorded for himself and his relatives within and outside the country to see what happened in the case.

The applicant underscored that the only condition for his application to be granted, according to the law, is the availability of audio-visual equipment. He added that the Judiciary has persistently been reporting its achievements in the ICT field. He reckoned that even this instant application was being conducted through video conference, hence the availability of electronic equipment would not a bar to the granting of his application.

Citing the case of **Alexander Barunguza vs. Law School of Tanzania & 2 Others**, Misc. Cause No. 11 of 2022 the applicant contended that there is no law which prohibits the recording of judicial proceedings,



adding that in the cited case the court stated that any person interested with the case was allowed to have its proceedings recorded.

On reply, Mr. Kalokola was in agreement with the applicant that the cited rule allows audio-visual recording of court proceedings. He, however, urged the court to satisfy itself on two legal conditions. **One**; the equipment to be used must ensure accuracy and **two**; if the equipment is trustworthy. He added that the equipment used to record and share information must be approved by the court.

There being no opposition from the learned State Attorney, the applicant had nothing to rejoin, leaving the court with one general issue for determination, which is whether the application has merit.

In determining the issue above, the court is required to examine the provision of the law under which the application is made and the applicant's affidavit for satisfaction of the legal requirements involved. Records are conspicuous that this application is made under rule 17 of the Rules, which has the following two sub-rules: -

*"17. (1) The court may, **where electronic recording equipment is available**, direct proceeding to be recorded electronically.*

*(2) Where proceedings are recorded electronically, they **shall be preserved in electronic device or***



facility approved by the Judiciary assuring accuracy and trustworthy of proceedings.”

[Emphasis added]

The above provision of the law supports the contentions by both the applicant that the court is empowered to give direction on electronic recording of the proceedings. Under this provision, and as correctly submitted by the applicant, what is required is availability of the recording equipment. Also, as correctly submitted by Mr. Kalokola, the court has to satisfy itself as to whether the device or facility to be used assures accuracy and trustworthy of proceedings. Up to this point, I would have no qualms with this application.

However, according to his oral submission to the court, the applicant's motivation for filing this application is to enable himself, his relatives and the public know what was happened in the proceedings of the cited constitutional case. In my considered opinion, neither the chamber summons nor the supporting affidavit addresses the applicant's desire to share the electronically-recorded proceedings. In other words, what the applicant desires to do is not what he craves for in his chamber summons. I think, this serious shortfall needs to be elaborated further, as hereunder.



In the chamber summons, the applicant applies for the following two orders:

- "1. That this Honourable Court be pleased **to allow the audio visual recording of the proceedings** of the case between Alexander J. Barunguza vs Law School of Tanzania and 2 others (Misc. Civil Cause No. 1 of 2023)*
- 2. That **costs** of this application."*

[emphasis added]

Apparently, no prayer is made in the chamber summons by the applicant to be **supplied** with a copy of the proceedings upon being electronically recorded. Supply of the recorded proceedings is a distinct order that can be made by the court upon application under Rule 18(1) of the Rules, which provides:

*"18.-(1) **The court shall supply** a copy of electronic record of proceedings or its transcript **upon application by a party** or an interested person.*
[emphasis supplied]

In this application, the supporting affidavit has a total of ten (10) substantive paragraphs. However, not a single paragraph provides



justification for the granting of the order sought in the chamber summons, let alone the applicant's desire to share the said proceedings with his relatives and the general public. It is paragraphs 2 and 8 only which contain some averments close to stating what the applicant desired, but unfortunately fell short of supporting the application itself. For example, paragraph 2 of the applicant's affidavit, states about the applicant's letter to the Judiciary titled "*OMBI LA KIBALI CHA KUREKODI MWENENDO MZIMA WA SHAURI LANGU (MISC. CIVIL CAUSE NO. 1 OF 2023 KWA KUTUMIA WATAALAMU WA TEHAMA AU WA KWANGU*". This can be literary translated as; - *Application for Permission to record the entire proceedings of my case (Misc. Civil Cause No. 1 of 2023) by using ICT experts or my own [experts].*

In that paragraph, all what the applicant states is that he had once sent a letter to the Judiciary asking for permission to record proceedings electronically. He does not state any reason for having those proceedings recorded.

Likewise, in paragraph 3, the applicant avers about the guidance he was given, which is to refer his request to the panel of judges who are in conduct of his case. Again, no reason for recording of the proceedings is stated. Paragraphs 4,5, 6 and 7 all talks about the ICT capacity in the Judiciary, the existence of the Rules, and applicant's ability and readiness to



carry out the recording. These paragraphs are also silent as to why the court should direct recording of the proceedings electronically.

In paragraph 8, the applicant avers that the case has public interest. But, again, he fell short of stating whether or not he desires to make the electronically recorded proceedings public. In paragraph 9 the applicant states the benefits to the court if the order in the chamber summons is granted. And, in paragraph 10, the applicant states that he deponed the affidavit in the interest of justice, in support of the chamber summons. In the end, nowhere in the affidavit the applicant specifically states the justification for the court to direct electronic recording of the proceedings, let alone to share the same with his relatives and the public.

As stated above, supply of the recorded proceedings to a party is a distinct order under rule 18(1) of the Rules, which is not part of the application before this court. It has once been said that a court of law is no one's mother. It cannot grant a party a relief he or she did not apply for. This settled legal position is also stated in **Dr. Abraham Israel Shuma Muro vs. National Institute for Medical Research & Another**, Civil Appeal No. 68 of 2020, CAT Mwanza, which referred to its previous decision in **Melchiades John Mwenda vs. Gizelle Mbagu (Administratrix of**




the Estate of John Japhet Mbaga – deceased) & 2 Others, Civil Appeal No. 57 of 2018 (unreported), on the same position of the law.

Since the affidavit does not provide any reason to justify the granting of court order sought in the chamber summons, and since the applicant has not applied for his desired order, to wit, to be supplied with the recorded proceedings for public sharing, I find no merit in this application. Accordingly, the same is dismissed. No order as to costs.

Dated at Dar es Salaam this 21st day of September, 2023.




ABDI S. KAGOMBA
JUDGE