IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB REGISTRY

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 26004 OF 2023

(Originating from Probate and Administration Cause No. 258 of 2002 Kinondoni Primary Court & Miscellaneous Civil Appeal No. 22 of 2004 Kinondoni District Court)

SAID ALLY MAKANYAGIRO ..... APPLICANT

VERSUS

PILI ABDALLAH MANYAMBA..... RESPONDENT

RULING

Date of Last Order: 24/05/2024

Date of Ruling: 30/05/2024

NGUNYALE, J.

The applicant Said Ally Makanyagiro preferred the present application against the respondent Pili Abdallah Manyamba praying for an order of extension of time within which to appeal against the decision of Kinondoni District Court in Miscellaneous Civil Appeal No. 22 of 2003 dated 7th April, 2004 on grounds of illegality. After hearing the parties, the court was composing ruling to determine as to whether the applicant has demonstrated good cause for the grant of the application. In the course of composing ruling the court noted the problem with the names

of the applicant; the names appearing in the present application are different from the names appearing in the impugned decision Miscellaneous Civil Appeal No. 22 of 2003 and the original case Probate & Administration Cause No. 258 of 2002. In the original case the applicant was using the name of Saidi Ally Said and in the appeal in the District Court, he was using the name of Saidi Ally. In the present application he is using the name of Said Ally Makanyagiro.

The inconsistency of the description of the names above made the court to re -open proceedings for the parties to address the court on the problem and suggest for the best reliefs. On 24th day of May, 2024 the matter was called for the parties to address the court. The applicant appeared represented by Erick Simon learned Counsel and Mr. Theodori Primus learned Counsel appeared for the respondent.

The applicant Counsel in his submission admitted that the names of the parties appearing in the decision of the trial court, the district court and the subsequent application are different. According to him the acceptable position of the law is that, the names in the appeal must be the same as they appear before the trial court accept with leave of the court. He was of the view that such discrepancies in the names was properly settled in the case of **Mustapha Lyapanga Msovela versus Electric Supply Co & Another** Civil Appeal No. 16 of 2020

(unreported) where the High Court ruled that the problems of the names renders the proceedings a nullity. In the matter at hand the discrepancies started from proceedings of the District Court Miscellaneous Civil Appeal No. 222 of 2023. The remedy is for the court to invoke revision jurisdiction under Section 30 (1) (a) (b) of the **Magistrate Court Act** Cap 11 R. E 2002 to nullify the proceedings before the trial court and struck out the present application. Alternatively, the court my invoke the overring objective principles under Section 3A and 3B of the **Civil Procedure Code** Cap 33 R. E 2019 and allow the applicant to make correction.

In reply, the respondent Counsel support the view that the names are different which means the parties are different persons. The proper remedy is to quash proceedings because the persons attempting to prosecute are different. He distinguished the case of **Lyapanga** (supra) because the scenario is different. The case of Lyapanga the appeal was already in place but in this case, it is an application for extension of time in which the court cannot quash proceedings of the District Court. He was of the view that the proper remedy is to struck out the application. On the prayer to struck out the application he relied to the recent Court of Appeal case of **Charles Christopher Humphrey Richard Kombe**

a/a Humphrey Building Material versus Kinondoni District Council.

In rejoinder the applicant Counsel insisted that the proper remedy is to invoke revision jurisdiction whether on appeal or application.

Having heard the parties, the important issue is whether the present application is properly before the court while founded on improper description of the names of the applicant. Both parties agreed that there is a mistake but they differ on the proper remedy to be granted by the court. The applicant says that the court has power to invoke revisional jurisdiction and quash the proceedings of the district court because they are founded on the names different from those appearing in the orders of the trial court. In his part the respondent Counsel states that in the application for extension of time the court cannot revise the decision of the district court, the circumstance of this case is to struck out the application which was filed by a stranger to the impugned decision.

The person who filed the initial probate is different form the one who filed the first appeal and also different to the one prosecuting the present application. The same is not in dispute because the parties were in agreement that names appearing in the judgment of the trial Court and of the District Court were different from those appearing in the present application as noted by this court. This difference is fatal

because the general rule is that parties to the proceedings should at any given time appear the same. This was the position in the Court of Appeal case of **Salim Amour Diwani versus The Vice Chancellor Nelson Mandela African Institution of Science and Technology & Another** Civil Application No. 116/01 of 2021 at Dar es Salam where it was observed; -

> *"I wish to state at the outset that, court records are considered authentic and should not be easily altered as parties would wish to. It bears reaffirming that, parties in the proceedings should at any given time appear as they did in the previous proceedings unless there is a reason for not observing that and only with the leave of the court. There is, in this regard, a considerable body of case law, See, for instance Hellena Adam Elisha® Hellen Silas Masui v. Yahaya Shabani & Another, Civil Application No. 118/01/2019 (unreported) in which the issue was that the names which were appearing in the notice of appeal were different from those appearing in the application to strike out the notice of appeal. We underscored the significance of the authenticity and accuracy of court records which in our considered opinion includes a citation of parties' names as they appear in the proceedings."*

In the present application, the names of the applicant to appear different from the names appearing in the district court is fatal because

it suggests that the application has been preferred by a stranger to the impugned decision. Change of the party's name without leave is fatal in the circumstance of this case. The same can only be done with leave of the court. In the case of **Joseph Magombi versus Tanzania National Parks (Tanapa)**, Civil Appeal No. 114 of 2016 Court of Appeal of Tanzania at Dar es Salaam I was observed that; -

> *"We think and agree with the Judges in the case of William Godfrey Urassa (supra) that the parties who featured in the initial proceedings should be the same parties featuring before the High Court as well as this Court. We further say, that unless a proper procedure has been followed to change or alter a name, no change of party's name should occur."*

The applicant has prayed the court to invoke revision jurisdiction under Section 30 (1) (a) (b) of the **Civil Procedure Code** Cap 33 R. E 2019 and quash the decision of the District Court which was preferred by a different name from that featuring in the original trial. I do not buy the position suggested by the applicant for two basic reasons **one**, the Civil Procedure Code is not applicable for matters originating from the Primary Court per Section 2 of the same Code **two**, time limitation and **three**, the court cannot quash proceedings of the district court in the

application for extension of time as accurately submitted by the respondent Counsel.

Alternatively, the applicant prayed the court to invoke oxygen principle to allow the parties to make necessary correction for the ends of justice. The prayer was strongly contested by the respondents' Counsel. The prayer seems attractive but cannot be relevant at the present circumstance where the defect started to the root where the court cannot allow correction easily. It has already been settled that that, court records are considered authentic and should not be easily altered by the wishes of the parties. The same is subject to legal procedures. Suppose the only mistake was to the application, the correction would be easily done.

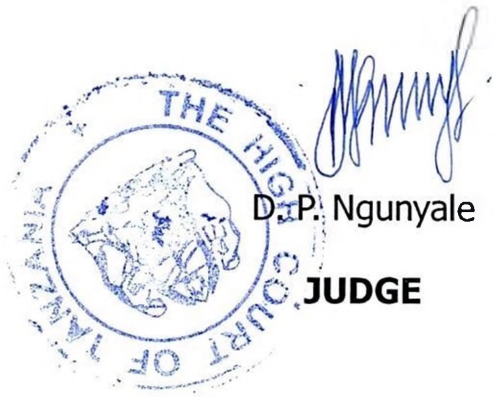
Having said and done, the proper remedy is to struck out the application which is improperly before the court. The application is hereby struck out with costs. Order accordingly.

Dated at Dar es Salaam this **30th** day of **May, 2024**.

D. P. Ngunyale

JUDGE

Ruling delivered this **30th** day of **May, 2024** in presence of the applicant represented by Erick Simon and Mr. Protas Zake both learned Counsels.



D. P. Ngunyale

JUDGE