

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL REVIEW NO. 17 OF 2017

(Arising from Misc. Commercial Application No. 110 of 2017 in Commercial Case
No. 82 of 2010)

SINGIDA SISAL PRODUCTS & GENERAL SUPPLY..... APPLICANT

VERSUS

ROFAL GENERAL TRADING LIMITED 1ST RESPONDENT

GIKURU COMPANY LIMITED 2ND RESPONDENT

SENSITIVE AUCTION MART

& COURT BROKER 3RD RESPONDENT

AWADHI ZUBERI ATHUMANI 4TH RESPONDENT

WINSTON BARUTI 5TH RESPONDENT

RULING:

MRUMA, J.

This is a ruling on a review application filed by Singida Sisal Products and General Supply who were the Applicant in Miscellaneous Commercial Application No. 110 of 2017. In that application Singida Sisal Products & General Supply made an application under Order XXI Rule 87 (1) of the Civil Procedure Code requesting for an order setting

aside sale of immovable property – a Godown situate at Usagara area Misungwi District in Mwanza which was sold by auction in execution of a decree of this Court in Commercial Case No. 82 of 2010. In its ruling this court found that Singida Sisal Products and General Supply was neither a natural nor a juristic suit could be instituted. The court also found that a non-juristic person cannot own name. The court proceeded to dismissed the application for that reason. It is that dismissal order that has sparked this review. The Applicant is contending that:-

1. The Honourable Court having made a finding that the application was incompetent erred in law in making an order dismissing the application instead of making an order striking it out.
2. The court having made a finding that the Applicant was a non-juristic person erred in law in dismissing the application instead of making an order directing amendment to the application so as to bring or record the proprietor of the business name in line with the application to that effect made in the course of submissions and decided cases.
3. The Honourable court erred in law is not considering the application on merits as required after the Applicant having deposited in court money for payment to the purchaser and to the decree holder according to the proclamation of sale.

Submitting in support of the application Mr. Denis Msafiri counsel for the Applicant contended that the order that was made by this court dismissing Miscellaneous Application No. 110 of 2017 is not appealable

and hence this application. The learned counsel maintained that it was an error for this court having found that the application was incompetent to dismiss it instead of striking it out.

In the alternative, the learned counsel argued this court to order an amendment so as to bring in the name of the proprietor of Singida Sisal Products and General Supply. The learned counsel cited several authorities of this court and the Court of Appeal in which court stated circumstances where they can strike out or dismiss an incompetent suit incending the case of Ngoni- Matengo Co-operative Marketing Ltd Union Ltd Vs. Ali Mohammed Osman (1959) EA 577 and Yahya Athman Kisesa Vs Hadija Omari Athman & 2 others Civil Appeal No. 105 of 2014. In Ngoni Matengo's case the issue was whether an incompetent appeal is dimssed or strike out. In Yahaya Athman's case the issue was whether having found that court has no jurisdiction to entertain the case, it was proper to dismiss it instead of striking it out.

Submitting in reply to Mr. Msafiri's contention, Mr. Ndibalema counsel for the 4th and 5th Respondents contended that it was proper for this court to dismiss the application because having found that it was preferred in the name of non juristic person it was as good as there be no application at all. The learned counsel submitted that striking out proceedings entails a party a right to reinstitute the same proceedings. He said that where a party who instituted proceedings is found to do legally not exist that right cannot accrue.

On his part Mr. Ndyetabula counsel for the 1st Respondent, submit that the essence of striking out the proceedings is to allow the

Applicant to come back to the court with the same application after rectification of what made the application to be strike out.

I pause here to observe that it was the submission of Mr. Msafiri that where a court finds that the proceeding before it is incompetent it is obliged to strike it out and not to dismiss it. Of course, that is the general position of the law as stated in the two authorities cited. However in my view the two authorities (i.e Ngoni Matengo's and Yahaya's case) are distinguishable. In Ngoni Matengo's case the issue was whether an incompetent appeal is dismissed or struck out and in Yahaya, Athman's case the issue was whether having found that the court has no jurisdiction the proceedings are dismissed or struck out. The present matter is different. Hre the court found that Singida Sisal Products & General Supply was not a juristic person. Thus matter did not therefore raise the issue of jurisdiction as it was in the case of Yahaya Athman's case or competence of the proceedings as it was in Ngoni - Matengo's case. The issue here was competency of the only person who instituted the proceedings. Having found that Singida Sisal Products & General Supply was not a juristic person the question would be whether proceedings instituted by such person would remain and if so if they can be amended. In other words the issue would be whether proceedings can stand without having a party who instituted it. If a party is found to be incompetent to bring a matter to court, unless there is a remaining party who can apply for amendment or rectifying of the matter, the matter must go as there can be no application without applicant. Similarly as correctly observed by Mr. Ndibalema and Mr. Ndyatabula counsel for the Respondent an order for striking out the application would mean to enable the Applicant to

rectify the error or defect and refile the same application after rectification. Because the present applicant (i.e Singida & Sisal Products & General Supply) has been found to be a non-juristic person therefore incapable of suing or be sued, it follows that this non juristic person cannot speak on its own or on behalf any other person including its proprietor. It is actually surprising that the same party who was held by this very court to be non-juristic person therefore incapable of prosecuting any matter before a court of law, has brought this application.

Let me conclude by saying that a non-juristic person has no legs to stand, no hands to prosecute, no eyes to see and no mouth to speak either on her own, or on behalf of any other person before any court of law. In my view, instead of bringing review proceedings, counsel for the Applicant would have advised the proprietor of Singida Sisal Products & General Supply to file a fresh application.

That said, Commercial Review No. 17 of 2017 is dismissed with costs to the 1st, 3rd, 4th and 5th Respondents who resisted it.

Order accordingly.




A. R. Mruma,

Judge

05th July, 2018