

**IN THE HIGH COURT OF TANZANIA A
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

COMMERCIAL CASE NO. 56 OF 2020

**INTERNATIONAL COMMERCIAL BANK (T) LIMITED PLAINTIFF
VERSUS**

CATS TANZANIA LIMITED 1ST DEENDANT

MOHAMED ROSHANALI HAMEER 2ND DEFENDANT

AKBER ROSHANALI HAMEER 3RD DEFENDANT

IMRAN MOHAMED HAMEER 4TH DEFENDANT

MAHAZER LIMITED 5TH DEFENDANT

Date of Last Order: 28/04/2022

Date of Ruling: 13/05/2022

RULING

MAGOIGA, J.

This ruling is on the preliminary objections on point of law raised by the learned advocate for the 1st, 2nd and 5th defendants to the effect that the instant suit is not maintainable because the plaint was drawn and filed by Mr. Julius Kalolo-Bundala who is barred from practicing law as an advocate in Tanzania mainland, hence, by operation of law under the provisions of section 3A (1) (2) and (3) as amended by section 4 of the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2020, sections 39(1)(b), 40, 41(1) and (2), 42, 43 (1) of the Advocates Acts, [Cap341 R.E.2019] and



section 17A(1), (2), (3) and (4) of the Office of the Attorney General (Discharged of Duties) Act, [Cap 268 R.E.2019] is unqualified person to practice law.

The basis of this objection is that, the plaint drawn, signed and filed by Mr. Julius Kalolo- Bundala with Roll No.642 in Commercial Case No.56 of 2020 representing the plaintiff (International Commercial Bank (Tanzania) Limited) being an unqualified person to act for the plaintiff is not maintainable. Upon being served with the plaint, the learned advocate for defendants in their joint Written Statement of Defence raised five set of objections but ingeniously and silently dropped out the other four points of objection for not saying a word on them in his submissions. So are marked dropped. In the circumstances, retained one point which was extensively argued on the qualification of Mr. Kalolo-Bundala to draw, sign and file the plaint in dispute subject of the above Commercial case No 56 of 2020. Therefore, the finding of this court will be on one point argued. Not only that, but also Mr. Cosatta silently and wholly dropped out the supplementary notice of objection filed on 6th day of April, 2022. The instant application was ordered to be argued by way of written submissions.



According to Mr. Cosatta, Mr. Bundala-Kalolo who drew and signed the
plaint in dispute subject of this suit is unqualified person to act as an
advocate by virtue of being an appointee of the President of the United
Republic of Tanzania to be member of the Judicial Service Commission and
Chairperson of the Board of Rural Energy Agency (REA) and as such
inspired by the provisions of section 3A (1) (2) and (3) of the Advocates
Act, Mr. Kalolo-Bundala is a public servant from the date of his appointment
and as such concluded that by operation of law is barred from practicing as
an advocate. It is on that note, the learned advocate for 1st 2nd and 5th
defendant after traversing several sections of the Advocates Act in his
submissions urged and implored this court to find and hold that the instant
suit is not maintainable for being drawn and filed by unqualified person and
proceed to dismiss it or struck it out with costs.

On the other hand, Mr. Richard Madibi, learned advocate for the plaintiff
submitted that in the first place the entire preliminary objection does not fit
to be a preliminary objection for want of being pure point of law as stated
in the case of MUKISA BISCUITS MANUFACTURING LIMITED vs. WEST END
DISTRIBUTORS LIMITED [1969] E. A 696 and cited other cases which faced
with similar objections found out that anything to do with bringing of



evidence cannot be pure point of law to qualify for being an objection on point of law.

According to Mr. Madibi, a mere appointment of an advocate to be a member of the board do not by itself constitute that the advocate is an employee of the Government as such public servant and as such pointed out that Mr. Kalolo-Bundala is not a public servant and has not offended any provisions of the law cited and is legally qualified to practice, draw, sign and represent clients and the suit is maintainable. Mr. Madibi went on to argue that, even if it can be said and argued as did by Mr. Cosatta, still is a question that need evidence to be answered, hence, making it not a pure point of law to warrant the striking or dismissal of the plaint as prayed by the defendants' counsel. The learned advocate for plaintiff prayed that this court find and hold that the objection is misconceived and devoid of any useful merits and proceed to dismiss it with costs.

Mr. Cosatta was to file rejoinder on 28/04/2022 but did not do so. This marked the end of filing written submissions paving way for this ruling.

I have carefully read and considered both the rivaling arguments for and against the merits of the preliminary objection on point of law argued, but with due respect to Mr. Cosatta, same is akin to fail miserably for being



misconceived and argued out of context. The reasons why I am taking this stance are not farfetched. **One**, as correctly argued by Mr. Madibi and rightly so in my view, the question whether Mr. Kalolo-Bundala is barred to practice as an advocate by virtue of his appointments to the posts so appointed, is a question that need evidence and not pure point of law. This is in line with the Court of Appeal decision in the case of ALLIANCE INSURANCE CORPORATION LIMITED vs. ARUSHA ART LIMITED, CIVIL APPEAL No. 297 OF 2017 (ARUSHA) CAT (UNREPORTED) in which it was held that the issue whether or not the person who signed ...is an unqualified person or not is matter which requires evidence to ascertain and as such does not qualify as pure point of law. **Two**, even to establish that Mr. Kalolo-Bundala is a public servant or not as well needs evidence and as such vitiates the argument for not being pure point of law to constitute an objection as clearly stated in the celebrated and famous case of MUKISA BISCUITS (supra).

Three, when probed by the court, Mr. Cosatta admitted that advocate Julius Kalolo-Bundala with Roll No 642 is still in the Roll of Advocates and has a valid practicing certificate according to TAMS and as rightly argued by Mr. Madibi makes the plaint proper document drawn by an advocate with



valid practicing certificate, hence, arguments advanced by Mr. Cosatta lacks legal legs to stand.

From the foregoing reasons, I hereby find this preliminary point of objection devoid of any useful merits. Consequently, I hereby dismissed the objection on point of law with costs to be borne by 1st 2nd and 5th defendants in favour of the plaintiff.

It is so ordered.

Dated at Dar es Salaam this 13th day of May, 2022.



S. M. MAGOIGA

JUDGE

13/05/2022