

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO. 97 OF 2018

QD CONSULT TANZANIA LIMITED.....1ST PLAINTIFF

UNDI CONSULTING GROUP LIMITED.....2ND PLAINTIFF

KIMPHIL KONSULT TANZANIA LIMITED.....3RD PLAINTIFF

BANGALIMA ASSOCIATES.....4TH PLAINTIFF

VERSUS

THE BOARD OF TRUSTEES OF THE PUBLIC

SERVICE SOCIAL SECURITY FUND (PSSSF)1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

Date of Last Order: 14/04/2022

Date of Ruling: 17/05/2022

RULING

MKEHA, J:

When on 25/03/2022 the parties convened for hearing, before commencement of the actual hearing, the Honourable the Solicitor General made submissions that there was no valid plaint capable of being

adjudicated. According to him, way back, on 19th March 2020, the court had issued an order directing formal impleadment of the Attorney General to conform to the dictates of section 25 of the Written Laws Miscellaneous Amendment Act No. 1 of 2020. The learned Solicitor General submitted that, up to the date the matter was called for hearing the said amendment was yet to be made, and the new defendant was yet to be served with the amended plaint in terms of Order I Rule 10 (4) of the Civil Procedure Code.

Before inviting the learned advocate for the plaintiffs for reply submissions I drawn his attention that the court record indicated that, whereas there was an order for amendment to formally implead the Attorney General, there was no amended plaint filed in court and that, the time for filing the same had long lapsed. I therefore impressed upon him, to make reply submissions without underrating would - be consequences, of failure to implead the Attorney General under the current state of the law, the Government Proceedings Act in particular. The learned advocate for the plaintiffs appeared to be of a view that, long adjournment was required so as to respond to the Solicitor General`s submissions. Given the fact that this case had been pending for nearly four years, long adjournment was refused, bearing in mind also that, long adjournment would not change

position regarding mandatory procedural requirements of the law. Nevertheless, an adjournment of three days` time was granted for the plaintiffs to reply to the Solicitor General`s submissions.

On 28/03/2022, Mr. Said Hassan Mwanga, Managing Director for the first plaintiff made a prayer, asking me to recuse from continuing hearing the case. The Managing Directors for the third and fourth plaintiffs were also in attendance. They were also in support of the prayer for recusal. According to Mr. Mwanga, the prayer for recusal was premised on the following five grounds:

- (i) The court`s reluctance to give long time adjournment for the plaintiffs to reply to the Solicitor General`s submissions;
- (ii) The position taken by the court that, long adjournment would not change the position of the law;
- (iii) Insistence of the court on the necessity of addressing it, on maintainability of the suit for failure of the plaintiffs to formally implead the Attorney General, as per mandatory provisions of the law and the court order dated 19/03/2020;

- (iv) Insistence upon the plaintiffs that, failure to respond to the Solicitor General`s submissions would have adverse impact to their case and
- (v) The fact that re- assignment of the case from the former Judge to another one left the plaintiffs worried.

According to the plaintiffs, because of what transpired in court on 25/03/2022, I was inclined to decide in favour of the defendants. In short, an allegation of bias was made. The Honourable the Solicitor General asked leave of the court, to submit on why there was no reason for recusal. The court granted the leave sought.

On 14/04/2022 the Honourable the Solicitor General submitted at length on why there were no reasons for the trial judge to recuse. Reliance was put on a stream of authorities indicating situations in which recusal should be granted or refused. The list included: **1. ISACK MWAMASIKA AND TWO OTHERS VS. CRDB BANK LTD, CIVIL REVISION NO. 6 OF 2016, CAT AT DSM; 2. ATTORNEY GENERAL VS. ANYANG NYONG`O AND OTHERS (2007) 1 EA 12 (EACJ); 3.LAUREAN G. RUGAIMUKAMU VS. INSPECTOR GENERAL OF POLICE AND ANOTHER , CIVIL APPEAL NO. 13 OF 1999; 4.**

REGISTERED TRUSTEES OF SOCIAL ACTION TRUST FUND AND ANOTHER VS. HAPPY SAUSAGES LTD AND ANOTHER (2004) TLR 264, 5. BENJAMIN MUGAGANI VS. BUNDA DISTRICT DESIGNATED HOSPITAL, MISC. LABOUR APPLICATION NO. 1 OF 2020, (HC) AT MUSOMA; 6. GOLDEN GLOBE INTERNATIONAL SERVICES AND ANOTHER VS. MILLICOM (TANZANIA) N. V AND ANOTHER, CIVIL APPLICATION NO. 195/01 OF 2017, CAT AT DSM AND 7. DHIRAJILAL WALJI LADWA AND TWO OTHERS VS. JITESH JAYANTILAL LADWA AND ANOTHER, COMMERCIAL CAUSE NO. 2 OF 2020, COMMERCIAL DIVISION AT DSM.

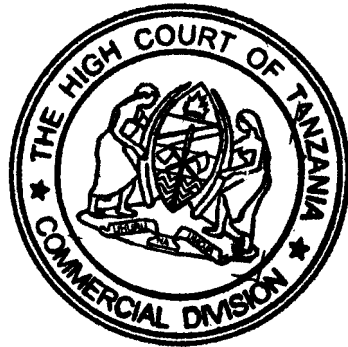
The Honourable the Solicitor General prayed that, the court be guided by the established principles to hold that, in the present case, no firm grounds for recusal had been put forward by the plaintiffs. I took time to read all the cited decisions. Without restating the established principles, but, gauging by the principles in the cited cases, none of the specific grounds put forward by the plaintiffs, justifies recusal of a judicial officer. I proceed holding that; recusal is not required because of statements made by judicial officers to the parties, in explaining court

procedures and consequences of non-compliance with the same. Nor can refusal to grant long adjournment to a four years` pending case, be a good ground for recusal, provided that, reasonable time is given for a party to prepare for hearing of his case. Personal knowledge of the disputed facts on part of a judicial officer, gained through seeing previous court orders in the same case file, cannot be a good ground for recusal. Neither is re-assignment of a case file to another judicial officer, for good reasons recorded in the same case file, a ground for recusal.

Notwithstanding the holding of the court on specific grounds put forward by the plaintiffs in asking recusal, the said grounds, put together and as submitted by Mr. Mwanga, the Managing Director of the 1st plaintiff, have something to do with an allegation of bias on part of the presiding judicial officer. In the case of **KISHORE VALLABHDAS AND ANOTHER VS. SMZ, CRIMINAL APPEAL NO. 80 1999, CAT (ZANZIBAR)**, the Court of Appeal held that, where bias is alleged, then, unless there be very good reasons, it is prudent for the judge or magistrate concerned to step down **not to insist** on hearing the matter. It is for this reason I hereby recuse from hearing this case. The

parties will shortly be notified of the other judicial officer to whom the same will be re-assigned. It is so held.

DATED at DAR ES SALAAM this 17th day of MAY, 2022.




C. P. MKEHA

JUDGE

17/05/2022

Court: Ruling is delivered this 17th day of May, 2022 in the presence of the parties' respective counsel.




C. P. MKEHA

JUDGE

17/05/2022