

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 11 OF 2020

(Originating from Sumbawanga Land Case No. 1 of 2016 at High Court of (T))

JILIA MAYUNGA 1ST APPLICANT
KULWA MKWABI MUHOJA 2ND APPLICANT
MIHAMBO WA MIHAMBO SHIJA 3RD APPLICANT
JERY ILUNDA 4TH APPLICANT
HENULE WALES LUGEMBE 5TH APPLICANT

VERSUS

NGUVUKAZI GROUP RESPONDENT

Date of last Order: 14/12/2020
Date of Ruling: 30/12/2020

RULING

C.P. MKEHA, J

On 28th July, 2020, the applicants filed before this court, an application for extension of time within which to file an application for setting aside an exparte judgment delivered by this court in Land Case No. 1 of 2016. The said exparte judgment was delivered on 07.06/2018. The applicants are appearing in person. On the other hand, the respondent is being represented by Mr. Chambi learned advocate.

Before the present application was listed for hearing Mr. Chambi learned advocate raised some points of preliminary objection. The same were argued

by way of written submissions. Although the parties argued two points of preliminary objection, it is the second point of objection which is considered to be determinative. It is couched in the following terms:

That, the application is not maintainable as some of the applicants i.e Kulwa Mkwabi Muhoja, Mihambo wa Mihambo Shija and Henule Wales Lugembe are not in the original case i.e Land Case No. 1 of 2016 upon which this application is made.

It was submitted by the learned advocate for the respondent that KULWA MKWABI MHOJA, MIHAMBO WA MIHAMBO SHIJA and HENULE WALES LUGEMBE were not parties to the suit whose judgment is sought to be challenged. In view of the learned advocate therefore, the three applicants in the present application have no locus standi to challenge the decision by way of setting it aside, to which they have never been parties.

It was submitted in reply by the applicants that the judgment and decree sought to be challenged did not list names of all the defendants but the first defendant JILIA MAYUNGA and "others" which was in contravention of Order XX Rule 7 of the Civil Procedure Code. The applicants maintained that, the said applicants, have locus standi in the matter as their rights and interests have been breached by the respondent. In what appeared to be an indirect concession, the applicants further submitted that, "the names might be different but it is the same person".

Without going into the issue of compliance or contravention of Order XX Rule 7 of the Civil Procedure Code which was not an issue on the preferred objection, to resolve the controversy between the parties, I found myself forced to travel back and reread the plaint which initiated the present matter. Upon carefully reading the said document, I found that, indeed, KULWA MKWABI MHOJA, MIHAMBO WA MIHAMBO SHIJA and HENULE WALES LUGEMBE who appear in the sequential order of the 2nd, 3rd and 5th applicants in the present application, were not parties in Land Case No. 1 of 2016 before this court.

Under Order IX Rule 13 (1) of the Civil Procedure Code it is only the defendant who may apply to the court by which the decree was passed *exparte* to have the said decree set aside. Therefore as correctly submitted by Mr. Chambi learned advocate the application is bad for including the three applicants who were not parties to the original case. The three applicants lack *locus standi* to prefer an application seeking to pave way to the setting aside of the decision in which they have never been parties as required under Order IX Rule 13 (1) of the Civil Procedure Code. The second point of objection is thus upheld for being meritorious.

For the foregoing reasons, the application is struck out for being incompetent. No order is made as to costs.

Dated at **SUMBAWANGA** this 30th day of DECEMBER, 2020.




C.P. MKEHA

JUDGE

30/12/2020

Court: Ruling is delivered in the presence of the parties.




C.P. MKEHA

JUDGE

30/12/2020