

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND APPLICATION NO 936 OF 2018**

ALLY NASSORO SEMBOGA

(As administrator of the late ASHA MBEGU).....**1ST APPLICANT**
YUSUPH MBEGU YUSUPH.....**2ND APPLICANT**

VERSUS

AMINA MOHAMED I.....**RESPONDENT**

Date of Last Order: 30.01.2020
Date of Ruling: 06.04.2020

RULING

V.L. MAKANI, J.

The respondent in this case has raised a preliminary objection on points of law that:

- 1. That the chamber application is incurable defective for lack of name and address of the drawer.*
- 2. That the affidavit is incurable defective for violating rules of drawing jurat attestation.*

The respondent abandoned the second ground of preliminary objection and argued the remaining point of objection.

Submitting on the first point of preliminary objection, the respondent argued that the application failed to contain the name and address of the drawer and that said this is contrary to section 44(2) of the Advocate's Act CAP 341 RE 2002 which provides that every person who prepares the document shall contain name and address of the drawer; and failure thereof the registering authority is allowed to

reject the document. The respondent relied upon the cases of **Robert Ibengwe vs. The Director, Hotel Tilapia (T) Limited, Civil Application No. 4 of 20110 (CAT-Mwanza)** (unreported) and **Albert Braganza & Another vs. Mrs. Flora Lourdin Braganza [1992] TLR 302**. She said since section 44(2) of the Advocates Act is mandatory and the Chamber Summons reflected that the drawer was the applicant without the name and address and an endorsement, then the application was incompetent. She prayed for it to be struck out with costs.

In reply, the applicants brought to the attention of the court that the submissions in chief filed by the respondent were filed on 02/12/2019 instead of 29/11/2019 as ordered by the court which was about 3 days out of time and without leave of the court. They prayed for the submissions to be disregarded and the preliminary objection be dismissed with costs for want of prosecution.

Addressing the points of preliminary objection raised, the applicants said that the purpose of section 44(2) of the Advocate Act was to restrain the non-practicing Advocates to draw the documents and pretend to be prepared by Advocates. They said that the issue at hand is that the document indicates that it was drawn and filed by the applicants and the names of the applicants are mentioned in the title of the case. She added that with the recent amendment under the Written Laws (Miscellaneous amendments, Act No 3 of 2018) the principle of overriding objective has been accommodated to the effect that courts should have regards to the substantive justice and avoid

technicalities which does not go to the root of the suit. They said that the applicants' failure to put address does not go the root of the suit because it has indicated that it was drawn and filed by the applicants. They cited the cases of **Danny G. Kwayu vs. Neema Godbless Lema & Others, Misc. Civil Application No. 749 of 2017** and the case of **Yakobo Magoiga Gichere vs. Penina Yusuph, Civil Appeal No 55 of 2017** (both unreported) to cement the issue of overriding objective where the Court of appeal courts should give more prominence substantive law to cut back on overreliance on procedural technicalities. She said that failure of the applicants to mention name and address does not defend end of justice because the application reflects that it was drawn and filed by the "APPLICANTS" and thus the preliminary objection must be overruled.

There was no rejoinder filed.

Before I proceed to determine the merits or otherwise of the preliminary objections raised by respondent, I find it prudent to first address the issue raised by the applicants in their reply to the respondent's submission that the submission in chief filed by the respondent was out of time. I have gone through the records of this court specifically, the Order of 29/10/2019 to the parties for filing submissions. The order is very clear that the respondent was to file her written submissions on or before 30/11/2019. Instead, the respondent's submission in chief was filed in this on 02/12/2019 two days out of time. The respondent did not seek leave of this court to file her submission out of time therefore what she filed after the

scheduled date is hereby disregarded. The respondent's failure to file his written submission is akin to failure to appear and prosecute her case. In the case of **Lucy Kasonda Makinda vs. Zaina Abdallah Making'inda, Misc. Application No 72 of 2019, (HC-Land Division)** Hon. A. Mohamed, J (as he then was) had this to say:

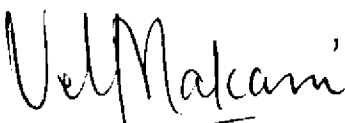
"It has been held in a catena of this Courts decisions that failure to file written submissions as ordered is akin to failure to appear on a hearing date and bears similar consequences. I accordingly find the applicant failed to file her submission in time without good reasons".

See also the case of **Harold Maleko vs. Mwasanjala, Civil Appeal No.16 of 2000 (HC-DSM)** (unreported) where it was stated that:

"Failure to file written submissions inside of the time prescribed by the Court Order was inexcusable and amounted to failure to prosecute the appeal."

From the foregoing, I am satisfied that that the respondent filed her submission out of time and without leave of the court. Consequently, the preliminary objections raised by the respondent are hereby dismissed for want of prosecution. Costs shall be in the cause.

It is so ordered.


V.L. MAKANI
JUDGE
06/04/2020