

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 176 OF 2023

MUSTAFA SEIF NGANE1ST APPLICANT

ABUSHEKHE SEIF NGANE 2ND APPLICANT

HUSNA ABDULRAHMAN HASSAN3RD APPLICANT

VERSUS

THE REGISTRAR OF TITLES1ST RESPONDENT

THE COMMISSIONER FOR LANDS2ND RESPONDENT

THE ATTORNEY GENERAL3RD RESPONDENT

R U L I N G

Date of Last Order: 27/04/2023

Date of Ruling: 31/05/2023

T. N. MWENEGOHA, J.

This Application of enlargement of time was brought under a Certificate of Urgency by way of Chamber Summons, which has been preferred under **Section 14 of The Law of Limitation Act, Cap 89 R. E. 2019**, the applicants are moving this Court to grant an order for enlargement of time within which the applicants shall be able to serve the 1st respondent and the Registrar of the High Court of Tanzania with the Notice to Appeal against the decision of the 1st respondent as enshrined in the Notices of Rectification bearing reference numbers 22081228214, 22081228239, 22081228254 and 22081228260.

The chamber summons is supported by an affidavit sworn by Mustafa Seif Ngane, the 1st applicant, which expounds the grounds for the Application.

The respondents filled their counter affidavit, and the parties filled the submission in chief, its reply and rejoinder thereof. The same was heard by way of written submissions.

However, this Court *suo motto* raised two issues and order the parties to address on it,

- 1. The status of Mustafa Seif Ngane suing on his own behalf/ name instead of administrator;**
- 2. Absence of affidavit of the other applicants.**

The same was heard by way of written submissions. The applicant enjoyed the service of Denice Tumaini, learned Advocate while the respondents were presented by Kauze K. Izina, learned State Attorney

As for the first issue that the 1st applicant submitted that he has sued on his own capacity, and his own name due to the facts that the Plots subjects of this Application are in his own name. The plots were transmitted from the ownership of the late Seif Ngane to that of the 1st applicant. That can be evidenced by the record in the registry of the 1st respondent, Notices of Rectification issued by the 1st respondent were addressed to MUSTAFA SEIF NGANE (in his own name and not as the administrator of the estate of the late Seif Ngane).

Turning to the second issue, the applicant submitted that the Application is supported by a single affidavit of Mustafa Seif Ngane since he has been authorized by the other applicants to affirm the said Affidavit on their behalf as indicated in Paragraph 2 of the said affidavit.

The applicant cited the Court of Appeal case of **Mohamed Abdillah Nur & Others Versus Hamad Masauni & Others**, Civil Application No 436/16 of 2022 that, where there are more than one applicants and wishes to have single affidavit, they must give authorization to a single applicant and such authorization must be so stated in the said affidavit.

Having going through the submission by the applicant, I am satisfied that, Mustafa Seif Ngane was right to sue on his individual capacity because the Title Deed bears his own name which guarantee him the status of suing and be sued on his own

However, on the 2nd issue I am of the view that the other 2 applicants had to swear the affidavit authorising Mustafa Ngane to sue on their behalf, failure of which this Court is incapable of knowing whether the rest 2 applicants authorised Mustafa Seif Ngane to swear and state on their behalf. The statement given in paragraph 2 of the 1st applicant's affidavit is not satisfactory to prove that the other applicants authorised the 1st applicant to sue on their behalf. Refer to the case of Mohamed Abdillah Nur (supra) at page7- 8

" we must quickly observe that, a person purporting to swear an affidavit on behalf of another person who is a party to a court proceeding must do so after consultation with and obtaining instructions from the party on whose behalf the affidavit is being sworn. We also hasten here to emphasize that, such instructions and authorisation must expressly reflected in the relevant affidavit. Other nothing must be presumed to the advantage of a party who fails or neglects to file pleadings or affidavits which are of the essence of the matter before the court of law."

For the aforesaid reasons, this Application is incompetent before me I hereby strike out the same with no order as to costs.

It is so ordered.



T. N. MWENEGOHA

JUDGE

31/05/2023

