

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 385 OF 2023**

**MUSTAFA SEIF NGANE 1ST APPLICANT
ABUSHEKHE SEIF NGANE 2ND APPLICANT
HUSNA ABDULRAHMAN HASSAN 3RD APPLICANT**

VERSUS

**THE REGISTRAR OF TITLES 1ST RESPONDENT
THE COMMISSIONER FOR LANDS 2ND RESPONDENT
THE ATTORNEY GENERAL 3RD RESPONDENT**

Date of Last Hearing: 23/08/2023

Date of Ruling: 12/09/2023

RULING

I. ARUFANI, J

The applicants filed the instant application in this court seeking for the following orders: -

- 1. This court be pleased to grant an order for enlargement of time within which the applicants shall be able to serve the first respondent and the Registrar of the High Court of Tanzania with the notice of appeal against the decision of the first respondent as enshrined in the notices of rectification bearing reference numbers 22081228214, 22081228239, 22081228254 and 22081228260.*
- 2. Any other relief this court deems fit to grant.*

The application is made under section 14 of the Law of Limitation Act, Cap 89 R.E 2019 and supported by an affidavit sworn by the first

applicant on his own behalf and on behalf of the other applicants. The application was opposed by a counter affidavit sworn by Ms. Frida P. Mollel, State Attorney authorized by all respondents to depose the counter affidavit on their behalf. When the matter came for hearing on 23rd August, 2023 the applicants were represented by Ms. Geraldina Paul, learned advocate and the respondents were represented by Ms. Frida Mollel, learned State Attorney.

The counsel for the respondents told the court the applicants filed the similar application in this court which was Misc. Land Case Application No. 176 of 2023. She stated the mentioned application was struck out for being found it is incompetent after being found there was no affidavit authorizing Mustafa Seif Ngane to sue on behalf of the other applicants. The counsel for the respondents told the court the defect caused the previous application to be struck out has been repeated in the current application.

She stated the present application is supported by the affidavit of Mustafa Seif Ngane affirmed on his own behalf and on behalf of the other applicants and there is no affidavit from the other applicants authorizing him to affirm the affidavit of supporting the application on their behalf. She prayed the court to struck out the application for being incompetent.

In reply, the counsel for the applicants told the court the application is properly before the court. She said she don't see the need of bringing separate affidavits from the other applicants as the deponent of the affidavit supporting the application states in the affidavit that he was authorized to affirm the affidavit on his own behalf and on behalf of the rest of the applicants. She contended the case of **Mohamed Abdillah Nur & Three Others V. Hamad Masauni & Two Others**, Civil Application No. 436/16 of 2022, CAT at DSM (unreported) relied upon by the court to struck out the previous application is not applicable to this court and prayed the court to proceed to hear the application.

In rejoinder, the counsel for the respondents said the counsel for the applicants has failed to direct herself properly because the issue before the court is whether the application is properly before the court. She submitted the application is not properly before the court because the similar application was decided by the judge of this court. She stated the court is *functus officio* to entertain the instant application. She submitted if the applicants wish to challenge the previous decision of the court they could have done so by way of revision or review and not to refile the application which has already been determined by the court. At the end she prayed the application be struck out with costs.

After giving due consideration the observation raised by the counsel for the respondents and the rival submissions made to the court by the counsel for the parties, the court has found the issue to determine here is whether the court is *functus officio* to hear and determine the present application. The court is said is *functus officio* to entertain a case which it has issued or make an order which is finally disposing of the case. The stated position of the law can be seen in the case of **Mohamed Enterprises (T) Limited V. Masoud Mohamed Naseer**, Civil Application No. 33 of 2012 where the Court of Appeal stated that: -

"Once judgment and decree are issued by a given court, judges (magistrates) of that court become "functus officio" in so far as the matter is concerned."

That being the meaning of the term *functus officio* the court has gone through the ruling of the court delivered in Misc. Land Case Application No. 176 of 2023 which was supplied to the court by the counsel for the parties. It has found it is true that the applicants filed the similar application in the court but the application was struck out on ground of being supported by an affidavit of Mustafa Seif Ngane who was the first applicant in the said application and there was no affidavit from the other applicants authorizing him to affirm the affidavit of supporting

the application on behalf of the other applicants. The court stated in its ruling that: -

"... 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 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."

The court has found the deponent of the affidavit supporting the instant application deposed at paragraphs 1 and 2 of the affidavit that he was deposing the affidavit in support of the application on his own behalf and on behalf of other applicants which is similar to what was deposed in the affidavit of the previous application which was struck out. As rightly argued by the counsel for the respondents, the applicants in the current application were required to comply with directives given by the court in the previous application if they wanted to refile the application in the court.

To refile the application bearing the defect caused the previous application to be struck out is to the view of this court not only an abuse of the court process but the court is *functus officio* to entertain the application. The court has come to the stated finding after seeing it cannot

entertain the matter which was struck out for being defective as the ground caused the previous application to be struck out has not been rectified.

The court has gone through the case of **Mohamed Abdillah Nur** (supra) which the counsel for the applicants said was relied upon by the court to arrive to its decision was not applicable in the matter and see the position of the law stated therein. The court has been of the view that, if the counsel for the applicants believed the court was not right in its decision to struck out the previous application, the right course to follow as suggested by the counsel for the respondents was to resort into the available legal remedy to challenge the decision of the court which struck out the previous application and not to refile the same application in the court while bearing the defect caused the previous application to be struck out.

Since the current application is suffering from the same defect as it is supported by an affidavit affirmed by Mustafa Seif Ngane and there is no proof from the rest of the applicants authorizing him to affirm the affidavit on their behalf as directed by the court, the court has found it cannot entertain the current application as the defect caused the previous application to be struck out has not been rectified in the present application.

Consequently, and without much ado the court has found the application at hand is improperly before the court for being filed in the court while bearing the defect which caused the previous application to be struck out. In the upshot the observation raised by the counsel for the respondents that the court is *functus officio* to entertain the present application is meritorious and the application is accordingly struck out for being incompetent. It is so ordered.

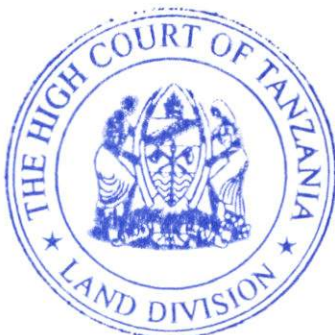
Dated at Dar es Salaam this 12th day of September, 2023




I. Arufani
JUDGE
12/09/2023

Court:

Ruling delivered today 12th day of September, 2023 in the presence of Ms. Geraldina Paul, learned advocate for the applicants and in the presence of Ms. Frida Mollel, learned State Attorney for the respondents. Right of appeal to the Court of Appeal is fully explained.




I. Arufani
JUDGE
12/09/2023