

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 60 OF 2021

BETWEEN

JORDAN FUNGOMALI KILEWO APPLICANT

AND

AMAN D. MGELWA AND 4 OTHERS1ST RESPONDENT

GLOBAL OUTDOOR SYSTEM.....2ND RESPONDENT

SENSITIVE AUCTION MART AND COURT BROKERS.....3RD RESPONDENT

SYMPHONY DISTRIBUTORS LIMITED.....4TH RESPONDENT

RULING

Date of last order: 17/11/2021

Date of Ruling: 13/12/2021

B. E. K. Mganga, J.

On 5th March 2021 applicant filed this application seeking the court to set aside the sale of 15 out of 24 billboards sold in execution of a decree vide Execution No. 327/2020. It was alleged by the applicant that there was material irregularity in conducting the sale of the billboard which, applicant, contends to be the owner but he was not a decree debtor. The application has been filed against the 1st respondent who are the decree holder in Execution No. 327 of 2020 before this court, 2nd

respondent who is the decree debtor in the said Execution No. 327 of 2020, 3rd respondent, the Court broker who was appointed by this Court and sold the Billboards in public auction and the 4th respondent who purchased the billboards in public auction. The alleged billboards sold, and which applicant alleges that he is the owner are located and specified as: -

1. *Location: Haile Selassie Rd, next to Nakumatt (From Chole Rd) (Double sided)- Size: Height (9m)/width (6m),*
2. *Location: Haile Selassie Rd, next to MMI (Double sided)- Size: Height (9m)/width (6m),*
3. *Location: Sea View/Ocean Road (Single & Double sided)- Size: Height (3m)/width (6m),*
4. *Location: Toure Drive to Coco Beach (Double sided)- Size: Height (3m)/width (6m),*
5. *Location: Toure Drive to Coco Beach (Double sided)- Size: Height (9m)/width (6m),*
6. *Location: Chole Road, Four Ways next to IST - Size: Height (12m)/width (9m),*
7. *Location: Ally Hassan Mwinyi Rd, Victoria (From Makumbusho)- Size: Height (3m)/width (6m),*
8. *Location: Sokoine Drive/Azikiwe Street. OppNBC HQ - Size: Height (9m)/width (6m),*
9. *Location: Nelson Mandela Road View from TAZARA (Double sided)- Size: Height (12m)/width (9m),*
10. *Location: Nyerere Road view from Mfugale Flyover - Size: Height (5m)/width (10m),*
11. *Location: Haile Selassie Rd, Opp. Hospital- Size: Height (9m)/width (6m),*
12. *Location: Kigamboni from Ferry - Size: Height (3m)/width (6m),*

- 13. Location: Kigamboni from Ferry (Double sided)- Size: Height (3m)/width (6m),*
- 14. Location: Village Building Opp Sea Cliff Village (Double Face)- Size: Height (3m)/width (2m), and*
- 15. Location: Haile Selassie Rd, near to PUMA Petrol Station (From Chole Rd) (Double Face)- Size: Height (3m)/width (2m).*

In the affidavit in support of the application, applicant deponed that, on 18th July 2018, he was handed over the sites with Billboards on settlement agreement with the 2nd respondent and that, on 26th July 2018 signed handover as a result the sites with billboards were handed over to him. It was also deponed by the applicant that on 14th November 2020, he became aware of Execution application No. 327 of 2020 at the High Court involving the 1st respondent (decree holder) and 2nd respondent (decree debtor) and that, 3rd respondent has attached 24 billboards 15 of which belongs to him. That, in November 2020 he filed objection proceedings Misc. Application No. 543 of 2020 and later on he withdrew it with leave to refile but later on he filed a new objection proceedings Misc. Application No. 30 of 2021. Applicant deponed further that on 4th February 2021, the 4th respondent issued a 7 days' notice of eviction and that on 23rd February 2021 he became aware of the eviction order issued by this Court on 11th February 2021 instructing the 3rd respondent to evict the 2nd respondent from the billboards and handle to

the 4th respondent (the purchaser). It was also deponed by the applicant, that in event this application is not granted, he will suffer irreparable loss.

The application was resisted by the 1st respondents who filed a joint counter affidavit wherein they deponed that applicant has nothing to claim as he is not the owner of the billboards in question. It was further deponed by the 1st respondents that, fourteen (14) out of 24 billboards were sold to the 4th respondent by Public Auction on 22nd December 2020 pursuant to court's order dated 15th December 2020.

The 3rd respondent filed both a notice of opposition and a counter affidavit opposing the application. In the counter affidavit affirmed by Abdallah Makatta on behalf of the 3rd respondent, the deponent deponed that fourteen (14) out of 24 billboards were sold to the 4th respondent by Public Auction on 22nd December 2020 pursuant to court's order dated 15th December 2020. It was deponed further that 2nd respondent was served with 14 days' notice on 19th November 2020 and that the notice was received by Charles Kilewo. It was further deponed on behalf of the 3rd respondent that there was no restraining order as a result she sold the 14 billboards on Public Auction on 22nd December 2020 to the 4th respondent.

The 4th respondent filed the counter affidavit of Nitin Kantilal Pandya, her principal officer to oppose the application. In the counter affidavit, it was deponed on behalf of the 4th respondent that she is the current owner of the disputed billboard but not allowed to sell them until court orders are issued. It was deponed further that applicant is interfering and preventing the 4th respondent from making maintenance and that he (applicant) is using Salender Bridge Police officers and Kawe Police Station officers to that effect. That, applicant has disobeyed court order relating to the said billboards.

I should point from the outset here that, the decree debtor (2nd respondent) did not file a counter affidavit or the notice of opposition.

The application was disposed by way of written submissions. In due course of composing my ruling I discovered that two important issues namely whether 2nd respondent was served and what is the proper address of the 2nd respondent were not properly addressed by the parties. I therefore, resummoned the parties to address these two issues which I thought are crucial in determination of the application at hand.

In arguing the application, Mr. Hamis Mikidadi submitted that applicant worked with the 2nd respondent up until 2018 when their relationship broke up leaving a debt of USD 45000 owed to the 2nd

respondent by the applicant. That applicant wrote a demand letter to 2nd respondent claiming payment of USD 45000 that was an outstanding balance from their business arrangements. That, on 22nd March 2018, 2nd respondent replied to the demand letter suggesting to the applicant to take ownership of some sites with billboards as settlement, the suggestion that was accepted by the applicant on 30th March 2018 in his letter of acceptance of the proposal. That, having accepted the offer, on 26th July 2018, applicant signed site hand over as a result, the billboards were formally handled over to him. In his submissions, Counsel reiterated what is contained in the affidavit in support of the application. He went on that, the decree holder prayed to attach movable property, but the warrant of attachment issued to the 3rd respondent directed him to attach all billboards without stating their location, value, or size and without requirement of verification of ownership. Counsel for applicant argued that, the mode of attachment applied to attach 15 billboards was hybrid whereby both movable and immovable modes of attachment was used. Counsel for applicant cited the case of ***Ms. Sykes Insurance Consultants Co. Ltd v. Ms. Sam Construction Co. Ltd***, Civil Revision No. 8 of 2010, CAT (unreported) that attachment of movable property is governed by a different rule and procedure in the Civil

procedure Act [Cap. 33 R.E 2019] from that of attachment of immovable property.

Responding to the issues raised by the court, Mr. Hamis Mikidadi, counsel for the applicant submitted that on 30th March 2021 the court issued an order to serve the 2nd respondent through substituted service as a result she was served on 2nd April 2021 through Mwananchi Newspaper. Counsel prayed to tender the said Newspaper as proof of service. Counsel conceded that after service, no information was brought to the court. On the issue relating to the address of the 2nd respondent, counsel submitted that the 2nd respondent's address is as per paragraph 4 of the affidavit i.e., Kigamboni area and Plot No. 8 and 10 Haile Sellasie road, **P.O. Box 78529 Dar es salaam**. When asked by the court the relationship between the deed of settlement and the application at hand, counsel submitted that the said deed of settlement (annexture JFK-4) relates to paragraph 11 of the affidavit in support of the application. He submitted that parties to the deed of settlement are ***Mr. Jordan Fungomeli Kilewo of P.O.Box 65379 Dar es salaam and Jordan Fungomali Kilewo of P.O.Box 9103 Dar es Salaam.*** Counsel for the applicant conceded that the address in the deed of settlement does not belong to the 2nd respondent and further that the deed of settlement does not show that 2nd respondent was a party.

Counsel submitted that the name of the 2nd respondent appears in the second page that was signed by the parties. Counsel for the applicant submitted that address **P.O. Box 65379** belongs to the applicant and that it is not known as who is the owner of P.O. Box 9103 that is shown in the deed of settlement.

Charles Shipande, counsel for the 1st applicants submitted that the 14 billboards out of 24 were sold by Public Auction to the 4th respondent on 22nd December 2020 pursuant to court's order dated 15th December 2020. That, the sale was through court's intervention and further that conditions for sale were complied with, and that, the same were sold by the 3rd respondent. Counsel cited the case of ***Curtis v. Maloney [1950] 2 All ER 982*** to illustrate a point that where a goods is in possession of a debtor at the time of seizure by bailiff or sheriff enforcing the warrant or other process of execution and is sold, the purchaser of the good so sold acquires good title to the goods and no person shall be entitled to recover from the sheriff or bailiff. Counsel cited also the case of ***Goodluck v Cousin [1897] Q.B. CA 558*** that where the claimant had an opportunity to prevent the sale but fails to do so, the purchaser acquires a good title to the goods. On claims of USD 45,000 by applicant owed to the 2nd respondent, counsel for the 1st respondents argued that the same is baseless for lack of contractual

relationship between the two. Counsel submitted that, all documents relied upon by the applicant are forged and prayed the court to disregard them. More so, he submitted that the deed of settlement is in contravention of section 47(1) of the Stamp Duty Act [Cap. 189 R.E as it bears no stamp. He cited the case of ***Zakaria Barie Bura v. Theresia Maria John Mubiru [1995] T.L.R 211*** wherein it was held that sale agreement not bearing stamp duty is inadmissible in evidence.

Mr. Shipande, counsel for the 1st respondents submitted further that if applicant is the owner of the said billboard, he was supposed to submit TRA receipts that he acquired them from the 2nd respondent, but he has failed. Counsel distinguished the ***Ms. Sykes's case***, supra, that the applicant is not the owner of the billboards in question. On failure to indicate the size, location and value of the property intended to be attached, Mr. Shipande submitted that the same does not vitiate sale as Order XXI Rule 12(1)(a), (b), (2) and section 53 of the Civil Procedure Code [Cap. 33 R.E. 2019] were complied with.

Responding to the issues raised by the Court, Mr. Shipande, counsel for the 1st applicants submitted that physical address of the 2nd respondent that was known to the respondents is Haile Sellasie before moving to Kigamboni. That, postal address of the 2nd respondent on the deed of settlement is not clear. He went on that parties appearing on

the deed of settlement is the same person i.e. **Jordan Fungomali Kilewo** but with two different postal addresses namely **P.O. Box 65379 Dar es Salaam and P.O. Box 9103** Dar es salaam. That signatories to the said deed of settlement are **Jordan Fungomali Kilewo** (consultant) of P.O. Box 65379 Dar es salaam and Rogers Buchanan, managing director of 2nd respondent, of **P.O. Box. 78529** Dar es salaam. Mr. Shipande submitted that the settlement deed (annexture JFK-4) had nothing to do with the 2nd respondent or the billboards. Counsel went on that, the postal address of the 2nd respondent appearing on the site hand over dated **26th July 2018** is **78529** while that of the applicant is **65379**. Counsel submitted further that the said site hand over is signed only by the 2nd respondent. Counsel argued that applicant has not acknowledged handing over of the site as he never signed the site handing over deed. Counsel submitted that site handing over deed was on 26th July 2018 and that on the same date settlement deed was made. But the settlement deed is dated 18th July 2018. Counsel submitted that in all documents filed by the applicant, there is no indication that he was granted, or he entered into deed of settlement with 2nd respondent for billboards located in Dar es salaam. That, in JFK 2 a proposal was made for billboard located in four regions namely Dar es salaam, Arusha, Mwanza and Dodoma.

Counsel argued that in JFK-3, applicant did not specify for the billboards that are in Dar es salaam and that he may have been allocated those in different regions. Counsel concluded that even the deed of settlement (JFK-4) did not mention billboards in Dar es salaam.

On his side, Gilbert Mushi, counsel for the 4th respondent, submitted that the 4th respondent is a bonafide purchaser. Counsel cited the case of ***Peter Adam Mbeweto v. Abdallah Kulala and Mohamed Mwete [1981] T.L.R 333*** and ***Suzan S. waryoba v. Shija Dalawa***, Civil Appeal No. 44/2017 (unreported) wherein it was held that a bonafide purchaser for value cannot be disturbed. Counsel went on that, in the objection proceedings, the objector is required first to prove ownership and that applicant has failed to discharge that duty. That, applicant has failed; to prove transfer of the said billboards since 2018 to date, business license, proof of capital tax or any tax paid to TRA and existence of USD 45,000 claim from 2nd respondent based on employment contract or consultancy agreement between applicant and 2nd respondent. Mr. Mushi, counsel for the 4th applicant also submitted that the deed of settlement is inadmissible for lack of stamp duty and cited the case of ***Malmo Montagekonsult Ab Tanzania Branch v. Margret Gama***, Civil Appeal No. 86 of 2001 CAT, (unreported) and ***Zakarie Barie's case***, Supra, and prayed that the deed of settlement

be disregarded. On submission that 1st respondents prayed to attach movable, but they attached the billboard that are immovable, counsel submitted that, that submission is not correct. He argued that billboards are movable and can be moved from one place to another depending on the targeted customers. He concluded that billboards are therefore not fixed to the land and that the law was complied with during execution.

Responding to the issue raised by the court, Mr. Mushi, counsel for the 4th respondent holding brief of Nyamoko Makata for 3rd respondent with leave to proceed, submitted that it is true that the court ordered substituted service to the 2nd respondent but a report on service was not communicated to the court and that this was not proper. He submitted that there is no dispute that 2nd respondent was served through Mwananchi Newspaper dated 30th March 2021.

On the issue of address of the 2nd respondent, submitting for both 3rd and 4th respondents, Mr. Mushi submitted that there is inconsistency on the postal address. He submitted that in the handing over deed, the address of the 2nd respondent reads **76528** but on the same document at the upper right side it reads **78529**. Counsel went on that parties to the deed of settlement are ***Mr. Jordan Fungomali Kilewo (debtor and Jordan Fungomali Kilewo but it is not shown as creditor.*** Counsel submitted that the base of the settlement deed is creditor and

debtor relationship. The settlement deed shows that **Mr. Jordan Fungomali Kilewo, the debtor proposed to Jordan Fungomali Kilewo the creditor.** Counsel submitted that; the deed of settlement has nothing to do with the 2nd respondent. He went on that, the address of **Mr. Fungomali Kilewo, the debtor, on the deed of settlement is P.O.Box 65379** and that this is the same address appearing in all documents of the applicant. Counsel concluded that the applicant is a debtor contrary to what he alleged in the affidavit in support of the application that he was supposed to be paid by the 2nd respondent and that after the later has failed, they signed settlement deed. Counsel concluded that the deed of settlement had nothing to do with the 2nd respondent.

In his written submission, Mr. Nyamuko Makatta, counsel for the 3rd respondent submitted that, applicant is claiming ownership of the billboards, that has been already auctioned on Public Auction, without proof of ownership. He went on that procedure of attachment and sale was complied with and that a notice was served to **Charles Kilewo** on behalf of the 2nd respondent before sale of the billboards in question. He concluded that applicant had no legal right to the billboards sold to the 4th respondent.

In rejoinder, Mr. Mikidadi, counsel for the applicant maintained that the order of attachment of the said billboards were vague for failure to mention size, value and location. He submitted that the ***Maloney's case*** and ***Goodluck's case***, supra, are irrelevant. That, the mode of attachment used is that of attaching immovable property. That, 4th respondent cannot be regarded as lawful purchaser as the procedure adopted was illegal. Responding to the submission that applicant was supposed to prove ownership of the billboards, counsel submitted that evidential rules such as section 110(1) of the Evidence Act [Cap. 6 R.E. 2019] applied in suits are not applicable in applications such as the one at hand. He went on that, in applications like the one at hand, courts are moved by enabling provisions supported by affidavits. On absence of stamp duty on the deed of settlement and prayer by the respondents that the said deed of settlement be disregarded, counsel for the applicant submitted that there is no legal requirement for admissibility of exhibits in application as that applies only in pleadings. He submitted that in pleadings, parties are subjected to strict proof but in affidavits, the deponent is required only to state the facts and support it by exhibits. Counsel maintained that applicant is the owner of the said billboards.

Rejoining on the issues raised by the court, counsel for the applicant conceded that there is no document showing that applicant chose billboards that are in Dar es Salaam and that site hand over does not show that annexure A1 relates to billboards located in Dar es salaam. He further conceded that, there is no paragraph in the affidavit in support of the application showing that applicant wrote a letter choosing billboards located in Dar es salaam. He also conceded that the deed of settlement is between **Mr. Jordan Fungomali Kilewo (creditor) and Jordan Fungomali Kilewo (debtor)** and that according to JFK 1 and 2, debtor was 2nd respondent and that these are the base of settlement deed. He conceded also that, the settlement deed has material errors making claims of the applicant to crumble. He was quick to argue that even if the settlement deed is disregarded, still applicant has made his case. After being probed further by the court, he conceded that the deed of settlement was entered by a single person namely Jordan Fungomali Kilewo.

I have carefully considered lengthy submissions by the parties on the main issue and the issues raised by the court which was very hot. I should say, the issues raised by the court helped the parties and the court to narrow many issues that were raised by the parties in their submissions and made the whole matter to be focused. But before I

embark on determination of the issue that will determine the application, it is important to say a word or two on the status of affidavit/counter affidavit and applicability of section 110(1) of the Evidence Act [Cap. 6 R.E. 2019] in applications like the one at hand.

It was submitted by counsel by the applicant in rejoinder that evidential rules such as section 110(1) of the Evidence Act [Cap. 6 R.E. 2019] applied in suits are not applicable in applications such as the one at hand, as in applications, courts are moved by enabling provisions supported by affidavits. It was also submitted on behalf of the applicant that there is no legal requirement for admissibility of exhibits in applications as that applies only in pleadings where parties are subjected to strict proof but in affidavits the deponent is required only to state the facts and support it by exhibits. In other words, counsel for the applicant is of the view that in applications like the one at hand, documents once annexed to the affidavit or counter affidavits, has to be accepted by the court and used in proving the issue in contention. With due respect to the counsel for the applicant, his view on applicability of section 110(1) and evidential value of affidavits or counter affidavits and annexures thereof is not correct. As a starting point, it has been held several times by this Court and the Court of Appeal that affidavit and counter affidavit are substitute of oral evidence. Some of the cases to that effect are the

case of ***Phantom Modern Transport 1985 Ltd vs. D.T. Dobie (T)***, Civil Reference No. 15 of 2001 and 3 of 2002, CAT, (unreported) Dar es salaam and ***Chadha and company Advocates vs. Arunaben Chaggan Chhita Mistry and 2 others***, Civil Application No. 25 of 2013, CAT, (unreported), Arusha. In the ***Chadha*** case, supra, the Court of Appeal quoted the decision in the case of ***Uganda v. Commissioner of Prisons Exparte Matovu [1966] EA 514*** in which it was held:

*"As a general rule of practice and procedure an **affidavit for use in court, being a substitute for oral evidence, should only contain statements of fact and circumstances to which the witness deposes** either of his own knowledge...such affidavit should not contain extraneous matters by way of objection or prayer or legal argument or conclusion"*

In the case of the ***Director of Public Prosecutions v. Dodoli Kapufi and Patson Tusale***, Criminal Application No. 11 of 2008 (unreported) the Court of Appeal defined an affidavit as follows

*"...a statement in the name of a person called deponent; by whom it is voluntary signed or sworn to or affirmed. It must be confined to such statements as the **deponent is able of his own knowledge to prove** but in certain cases may contain statements of information and belief with grounds thereon."* (emphasis is mine)

In ***Bruno Wenslaus Nyalifa v. The Permanent Secretary Ministry of Home Affairs***, Civil Appeal No. 82 of 2017, (unreported) the Court of Appeal held that:-

"...affidavit is evidence and the annexure thereto is intended to substantiate the allegations made in the affidavit. Unless it is controverted therefore, the document can be relied upon to establish a particular fact." (emphasis is mine)

Since affidavit and counter affidavits are substitutes of oral evidence, both affidavit and counter affidavits that mentions another person but the affidavit or the counter affidavit of that person being not attached, that remains to be hearsay that cannot be acted upon by the courts. In fact, there are a plethora of decisions by the Court of Appeal that an affidavit which mentions another person is hearsay unless that other person swears as well. Some of these decisions are ***Sabena Technics Dar Limited v. Michael J. Luwunzu, Civil Application No. 451/18 of 2020***, CAT (unreported), ***Franconia Investments Ltd v. TIB Development Bank Ltd***, Civil Application No. 270/01 of 2020, ***Benedict Kimwaga v. Principal Secretary Ministry of Health***, Civil Application No. 31 of 200, ***NBC Ltd v. Superdoll Trailer Manufacturing Company Ltd***, Civil Application No. 13 of 2002 (all unreported to mention but a few. Once an affidavit or counter affidavit

is found to have violated the rules relating to both an affidavit and a counter affidavit, it has to be struck out leaving the ones in compliance with the rules as it was held by the Court of Appeal in the case of ***Rustamali Shivji Karim Merani v. Kamal Bhushan Joshi, Civil Application No. 80 of 2009*** (unreported). All the cited cases underscore how both affidavit and counter affidavit can be treated and their evidential value. It is not correct therefore to assume that both affidavit and counter affidavit evidence are of less value compared to oral evidence as counsel for the applicant appear to assume. It is also not correct to assume that section 110(1) of the Evidence Act [Cap. 6 R.E 2019] does not apply when parties opt to prove their case by affidavit evidence. In no way burden of proof can shift simply because it is application or that parties have decided to prove their case by affidavit and counter affidavit. It is my considered view, that whether it is an application or not, provisions of the law have to be complied with, which is why, the Court of Appeal interpreted absence of affidavit of a person mentioned in one's affidavit as hearsay. As a general law, hearsay cannot be admitted as evidence whether in affidavital/counter affidavital or oral evidence. With that analogy, any annexure annexed to the affidavit or counter affidavit intending the same to be acted upon by the court, it has to comply with the law first.

Turning to the application, the main contention between the parties has been whether it was proved by affidavit that applicant is the owner of the billboards, the subject of this application, to entitle him locus to file this application or not.

It was deponed in the applicant's affidavit and submitted that applicant signed a deed of settlement with the 2nd respondent and therefore he is the owner. The respondents challenged the said deed of settlement that it did not pass ownership to the applicant as there is no stamp duty on the said deed of settlement. I have carefully examined the said alleged deed of settlement and find that there is no stamp duty. In ***Margret Gama's case***, (supra) and ***Zakarie Barie's case***, (supra), the Court of Appeal found that the sale agreement that was not stamped was not good evidence upon which to decide the rights of the parties. The same applies to the alleged deed of settlement. Section 47(1) of the Stamp Duty Act[Cap.189 R.E. 2019] clearly reads:-

47.- (1) No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive the evidence or shall be acted upon, registered in evidence authenticated by any such person or by any public officer, unless such instrument is duly stamped:

The said deed of settlement is not covered by the proviso to that section. Therefore, it was supposed to comply with that provision of the law.

Apart from the foregoing, respondents argued that applicant failed to prove transfer of the said billboards since 2018 to date, that no business license, proof of capital tax or any tax paid to TRA and existence of USD 45,000 claim from 2nd respondent based on employment contract or consultancy agreement between applicant and 2nd respondent to entitle him locus file this application. Applicant's counsel thought, wrongly in my view, that applicant has no burden of proof which is why he contended that section 110(1) of the Evidence Act [Cap. 6 R.E. 2019] does not apply to this application. In my view, he was duty bound to prove as held herein above. I have read the affidavit in support of the application and find that evidence of transfer, business license for the applicant to do such business or that he is recognized by relevant authority, payment of capital tax or any tax paid to TRA in connection with the billboards is wanting.

More interestingly, it was conceded by counsel for the applicant, correctly in my view, that there is no connection between the applicant and the settlement deed and that there is no document showing that applicant chose billboards that are in Dar es Salaam. Counsel correctly

conceded in my view, that site hand over does not show that annexure A1 relates to billboards located in Dar es salaam and that there is no paragraph in the affidavit in support of the application showing that applicant wrote a letter choosing billboards located in Dar es salaam. He conceded that the deed of settlement is between Mr. Jordan Fungomali Kilewo (debtor) and Jordan Fungomali Kilewo (debtor) and that according to JFK 1 and 2, debtor was 2nd respondent and that these are the base of settlement deed. He conceded also that the settlement deed has material errors making claims of the applicant to crumble. He further conceded that, the deed of settlement was entered by a single person namely Jordan Fungomali Kilewo. I entirely agree with him and counsels for the respondents that the alleged deed of settlement is worthless and cannot be acted upon by this court. The parties to the purported deed of settlement are **Mr. Jordan Fungomali Kilewo** (debtor) and **Jordan Fungomali Kilewo** who is supposed to be creditor. The purported deed of settlement does not support claim of USD 45,000 by the applicant from the 2nd respondent. It was also conceded on behalf of the applicant that the address in the deed of settlement does not belong to the 2nd respondent and further that the deed of settlement does not show that 2nd respondent was a party. The name of the 2nd respondent appears in the second page that was signed by the parties only and not

in the page containing terms of the agreed issues. More so, it was conceded by counsel for the applicant that address **P.O. Box 65379** belongs to the applicant and that it is not known as who is the owner of P.O. Box 9103 appearing on the deed of settlement. It is very strange and absurdity that a person who signed the deed of settlement does not know even postal addresses on the said deed of settlement.

For all said herein above, I conclude that 2nd respondent was not party to the purported deed of settlement and further that applicant is not the owner of the billboards in question hence lacks locus to this application. I therefore dismiss this application for want of merit.



A handwritten signature in black ink, appearing to be 'B.E.K. Mganga'.

B.E.K. Mganga

JUDGE

13/12/2021