

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB REGISTRY

MISC. CIVIL APPL. NO. 427 OF 2023

(Arising from the decision in Civil Case No. 265 of 2019 in the District Court of Kinondoni at Kinondoni delivered on 21st February 2023- Hon. Rwehumbiza)

LYAKUNDI INVESTMENT COMPANY _____ APPLICANT

ALEX CHUMA KAPAMA _____ RESPONDENT

RULING

09th & 15th April. 2024

KIREKIANO J.

In Civil Case no. 265 of 2019 before the District Court of Kinondoni at Kinondoni, the respondent sued "Lyakundi Investment Company Ltd" and "Stanley Misael Lyakundi". On 21st February 2023, the District Court entered judgment in favour of the respondent against the applicant "Lyakundi Investment Company Ltd". Dissatisfied with the decision, and being out of time to challenge the said decision, the applicant preferred this application under the provision of section 14 (1) of the Law of Limitation Act, Cap 89 RE 2019. The application is supported by an affidavit of "Stanley Misael Lyakundi" seeking for enlargement of time within which to appeal against the said decision.

The application was opposed by a counter affidavit deposed by “Alex Chuma Kapama” the respondent, in his affidavit, the applicant raised two main grounds and narrated facts in support of this application. However, for reasons which will appear hereunder, I will not reproduce those facts.

During the hearing of this application, the applicant had the service of Mr Amin Mohamed Mshana, learned advocate while the respondent was represented by Mr Paulo Patience Hyera, learned advocate. While composing the ruling, this Court noted that the respondent sued two defendants that is “Lyakundi Investment Company Ltd” and “Stanley Misael Lyakundi” The impugned judgment and decree indicated one part only is “Lyakundi Investment Company Ltd” nowhere it is indicated what happened to the other defendant.

Looking at the application the depositions in the affidavit are by a part not strange in the proceeding but not named in the judgment. Having noted this anomaly, to avoid injustice or further irregularity which may be occasioned and with a view of enabling the court to deal with the parties’ dispute justly and at proportionate cost, this Court invited parties to address this Court on this anomaly.

Mr. Hyera, Counsel for the respondent accepted that, that the judgment of the trial Court named "Lyakundi Investment Company Ltd" while the incumbent application the applicant's affidavit was deponed by "Stanley Misael Lyakundi Lyakundi who was a part of the trial Court but his record is missing in the judgement and decree. In this, he was of the view that this anomaly would cause further irregularity even in the execution of the decree. According to Mr Hyera consistency of the parties in the proceeding ought to be maintained. In support of his view, He cited the case of **Salim Amour Diwani v The Vice Chancellor Nelson Mandela African Institution of Science and Technology and Another, Civil Application No. 116/01 of 2021 (Tanzlii)**.

As it stands, he was of the view that this court should direct the trial court to rectify the same to incorporate the missing part; conversely; the applicant should withdraw the application and apply afresh for amendment in the subordinate court.

On the part of Mr. Mshana, counsel for the applicant was of the view that this anomaly may be rectified by the trial Court by issuing a proper judgment and decree. He was of the view that his court is vested with general powers of supervision of the subordinate court, thus for the

interest of justice and expeditiousness, the anomaly may be cured by the trial court if directed by this court.

After hearing both learned counsels' submissions it is common ground that there is an anomaly in the naming of parties in the judgement of the District Court. I also agree with the submission by Mr Hyera that the naming of parties in the proceedings should be consistent. On the record available before this court, it is also evident that even the contents of the judgment mention two parties in its contents but only one party appears in the heading.

In the cited case of **Salim Amour Diwani the** CAT cited the Case of **Isaack Wilfred Kasanga v. Standard Chartered Bank Tanzania Limited, Civil Application No. 453/01 of 2019 (unreported)** in which the Court was faced with an akin situation, and went on to observed that,

"Parties in the proceedings should at any given time appear as they did in the previous proceedings unless there is a reason for not observing that".

It was also observed by the court of appeal in **Salim Amour Diwani** supra that the authenticity and accuracy of Court records include a citation of parties' names as they appear in the proceedings.

As indicated the plaint and the contents of the judgment itself mention two parties, "Lyakundi Investment Company Ltd" and "Stanley Misael Lyakundi" but only one party appears on the title of the judgment and decree, this was in the record irregularity.

On the way forward having given much thought to the submission by Mr Mshana, I agree that this court being vested with general powers of supervision may give direction to the subordinate court for the sake of justice. These powers find their expression under The **Magistrates' Courts Act [CAP. 11 R.E. 2019]** where section 44. -(1) provides;

In addition to any other powers on that behalf conferred upon the High Court, the High Court-

*(a) shall exercise general powers of supervision over all district courts and courts of a resident magistrate and may, at any time, call for and inspect or direct the inspection of the records of such courts **and give such directions as it considers may be necessary in the interests of justice,***

Given the above the district court of Kinondoni is directed to rectify the judgment and decree to maintain to the name of the parties as they originally appeared in the pleadings before the district court. For avoidance of doubt rectification is limited to naming of the parties only.

Considering that the issue was raised by this court suo motu, I shall make no order as to cost.



A handwritten signature in blue ink, consisting of a stylized 'A' and 'J' followed by a horizontal line.

A.J. KIREKIANO

JUDGE

15/04/2024

COURT:

Ruling delivered in presence of Miss Anna Lyakund the Applicant Director and Mr Paul Hyera council for the Respondent.



sgd

A.J. KIREKIANO

JUDGE

15/04/2024