

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)**

AT ARUSHA

MISCELLANEOUS LAND CASE APPEAL NO. 27 OF 2020

**(From District Land and Housing Tribunal of Arusha appeal No.368 of
2019, Originating from Makiba Ward Tribunal Application No. 2 of
2018)**

CHAIRPERSON PATANUMBE VILLAGE COUNCIL.....APPELLANT

Versus

ENOCK KITOI..... RESPONDENT

JUDGMENT

6th October & 12th November, 2021

MZUNA, J.:

The appellant after being aggrieved by the decision of Arusha District Land and Housing Tribunal in Miscellaneous Application No. 368 of 2019 preferred this appeal. The appeal is based on three grounds as follows;

- 1. That, it is incorrect, illegal and improper for the executing Court to direct the decree holder to execute decree against the property of another legal person who was not a party to the case.*
- 2. That, Hon. Chairperson erred in law and fact for failure to discuss and make finding on whether judgment debtor in application for execution was a legal person capable to own disputed property in its own name.*

- 3. That, Hon. Chairperson erred in law and fact for failure to consider the jurisdictional powers of the Ward Tribunal as a factor that makes the order non executable.*

Brief history of this case is traced from the Makiba Ward tribunal application No. 2 of 2018. The respondent successfully sued the appellant in the said Makiba Ward Tribunal. Thereafter, the respondent filed an application for execution vide Miscellaneous Application No. 368 of 2019 in the Arusha District Land and Housing Tribunal. After hearing on merit, the Chairperson of the Tribunal allowed the execution to take place whereby FIRST WORLD INVESTMENT COURT BROKER was assigned that duty. The 20 acres piece of land in the village of Patanumbe was handed over to the respondent. Hence this appeal.

During hearing, the appellant was represented by Mr. Mkama Musalama, the learned State Attorney whereas the respondent enjoyed the service of Kennedy Mapima, the learned Counsel. Before hearing could proceed, Mr. Mapima raised two preliminary points of objections on the points of law which reads as follows:-

- 1. That, the appeal is bad in law for failure to state from which decision it originates from.*
- 2. That, the appeal is bad in law in that, the name of the appellant is not that of the party who featured in the proceedings before the District*

Land and Housing Tribunal for Arusha at Arusha in Misc. Application No. 368 of 2019.

During hearing, the court consolidated the raised preliminary objections as well as the appeal. Mr. Mapima opted to abandon ground No. 1 leaving ground No.2. He argued on objection number two only.

The main issue is whether the names of the appellant is different from that in the Miscellaneous Application for execution No. 368 of 2019 in the Arusha District Land and Housing Tribunal.

Mr. Mapima argued that the names in the Miscellaneous Application No. 368 of 2019 are Enock Kitoi versus Mwenyekiti wa Kijiji cha Patanumbe (Unambwe Yohana) kwa niaba ya Serikali ya Kijiji cha Patanumbe whereas in this appeal the appellant is Chairperson Patanumbe village Council. He says that, the appellant being not a party in the Miscellaneous Application No. 368 of 2019 is barred from appealing to the decision which he was not a party. To buttress his argument Mr. Mapima referred this Court to the case of **CRDB Bank PLC (Formerly CRDB 1996 LTD)**, Civil Appeal No. 110 of 2017 CAT at Mbeya (unreported), where the appeal was struck out for being incompetent because it had name of a stranger thereto.

On his part, Mr. Musalama strongly disputed the raised preliminary objection arguing that the name of the appellant in this appeal is the

same with that of the respondent in the Miscellaneous Application No. 368 of 2019. That the confusion of the name of the appellant is not fatal and it does not go to the root of the case. He insisted that the defect is curable. To amplify his point, he cited the case of **Christina Mrimi vs Coca Cola Kwanza Bottlers LTD**, Civil Application No. 113 of 2011 CAT at DSM (unreported) where the court allowed rectification of the name of a party to fit its original name as it did not mislead and bring confusion. Also Mr. Musalama based his submission on Article 107A(2)(e) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time. He also argued his submission in the light of the overriding objectives as being saving the defect. He cited the cases of **Shear Illusion Limited vs Christina Ulawe**, Civil Appeal No. 114 of 2014 CAT at DSM (unreported) and **Maneno Mengi Limited and 3 Others vs Farida Said Nyamchumbe & Another** [2004] T.L.R 395. Therefore, he considers such irregularity as a minor one and negligible.

This court has this to say. The names which are considered to be different are *Chairperson Patanumbe Village Council* as they appear in this appeal and *Mwenyekiti wa Kijiji cha Patanumbe (Unambwe Yohana)*

Kwa niaba ya Serikali ya Kijiji cha Patanumbe as it is styled in the Miscellaneous Application No. 368 of 2019.

The Court of Appeal of Tanzania being confronted with the same issue in the case of **Inter-Consult Limited vs Mrs. Nora Kassanga and Mathew Ibrahim Kasanga**, Civil Appeal No. 19 of 2015 (unreported) had this to say:-

"Be it as it may, we agree with Mr. Vedasto that substitution of the appellant's name from International Engineering Consultancy Services Ltd to Inter Consult Ltd without any specific order of the trial court was an irregularity which was fatal. It is an irregularity which does not fall within the ambit of the provisions of section 96 of the CPC.....We, therefore, find the appeal is incompetent liable to be struck out".

In the instant case as so alluded above, the names of *Chairperson Patanumbe Village Council* and *Mwenyekiti wa Kijiji cha Patanumbe (Unambwe Yohana) Kwa niaba ya Serikali ya Kijiji cha Patanumbe* cannot be said to be one and same thing. They are two different names which cannot also be saved by the principle of overriding objectives as argued by Mr. Musalama. The defect is major one which goes to the root of the case. It may cause an embarrassment during the execution process. If Mr. Musalama would have wanted to infer the name as it

appears in this appeal, he could have applied to the Trial Tribunal to be granted with the order of change of name under Order I rule 10(2) of the Civil Procedure Code, [Cap. 33 R.E 2019] which provides as follows;

*"The court may, at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the court to be just, **order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that (be name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectively and competently to adjudicate upon and settle all the questions involved in the suit, be added"***

[Emphasis added]

The name Chairperson Patanumbe Village Council featured for the first time in the records of this appeal. In my opinion they cannot be corrected at this stage as rightly argued by Mr. Mapima. If as Mr Msalama said in his rejoinder submission, citing the case of **Farao Raiton Mtafya v. VEO Chamoto Village**, Misc. Land Appeal No. 17 of 2019, High court of Tanzania, Mbeya Registry, that the Village chairman cannot sue or be sued in his capacity for or on behalf of the Village council or the Village itself and that the right party to sue is the Village Council and not the Village Chairman, this ought to have been done

either by a court order or adopt the procedure above stated under the law. To bring a different party at the appeal stage is something which no court of law worth such a name can condone. Therefore, the only remedy available as I hereby do, is to struck out this appeal as being incompetently filed as it bears different parties.

The raised preliminary objection is hereby sustained with costs.

Order Accordingly.



**M. G. MZUNA,
JUDGE.
12/11/2021.**