

TANZANIA / JUDGMENT

APPLICATION NO

COURT
TANZLIIDECIDED
1 January 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC. LAND APPLICATION NO. 17294 OF 2024 (Arising from Mise. Land Application No.13268 of 2024 which also arose from Land Case No. 156 of 2005) AFROPLUS INDUSTRIES LTD..... APPLICANT VERSUS MANG'ULA MECHANICAL & MACHINERY TOOLS COMPANY LTD..... 1st RESPONDENT EFATHA FOUNDATION LTD..... 2nd RESPONDENT THE ATTORNEY GENERAL (Successor of Consolidated Holding Company)..... 3rd RESPONDENT

RULING

24/9/2024 & 30/9/2024 GWAE, J The applicant, Afroplus Industries Ltd, has brought this application under section 78 (1) together with Order XLII Rules 1 (b), 2 and 3 of the Civil Procedure Code, (Cap 33, Revised Edition, 2019) aimed at moving this Court to review its own order and findings dated 10th May 2024 on the following grounds:-

1. The High Court Judge assumed its jurisdiction he did not have by striking out the application for non-joinder of the i other party while there was no suit before him for the suggested party to join.
2. There is apparent error on the face of the record by failure to rule out that, there was already a ruling of the same Court entertaining the application for extension of time allowing the filing of the struck out application.
3. The High Court made a grave error by violating Applicant's right of being heard by showing that, the issue resulted into the striking out the application was raised by the applicant while in actual fact it was raised by the court suo motto. The applicant is praying for this court to review its own order and re- admit Mise. Land Application No. 13268 of 2024 between the parties herein and the cost of the suit to be awarded to the applicant. Hearing of the application proceeded verbally. Mr. Sylvanus Mayenga, the learned advocate represented the applicant whereas Ms. Mariam Matogorwa, learned State Attorney appeared for the 1st and 3rd respondent and Mr. Kephass Mayenje, on the part appeared for the 2nd respondent. In support of the application, Mr. Mayenga briefly narrated the background of the instant matter by stating that, on 12th October 2015, this court dismissed the Land Case No. 156 of 2005 for non-appearance before Wambura, J. The applicant filed Mise. Land Application No.

662 of 2023 for extension of time in order to restore Land Case No. 156 of

2005. The application for extension of time was granted and thereafter the applicant duly filed Application No. 13268 of 2024 for restoration of the Land Case. Mr Mayenga stated further that, when the matter was fixed for hearing, the issue of nonjoinder of the Registrar of Treasury emerged. He submitted that, the issue of nonjoinder, would not have been raised in this stage of application. He added that, since the application was on the similar subject, it was therefore legally proper to proceed with the same parties, as it was the case on the application for extension of time to file application for restoration. He prayed to have their application granted and each party to bear its own costs. In his reply thereof, Mr. Mayenje submitted that, the complaint raised does not constitute an error apparent to the impugned order in terms of section 78 (1) (a) and Order XLII Rule 1 (a) of the CPC. It was his view that, the court record is serious and vital document. Thus, it cannot be lightly challenged since documents exhibits what accurately 3 transpired. He referred to the proceedings of this court dated 10th July 2024 and stated that, the court was moved by the applicant's advocate as according to him, he noted legal anomaly in the application namely; failure to join the Registrar of Treasury and the one who sought to have it withdrawn. To him, the error was committed by the counsel for the applicant and not the court. He was therefore of the view that, the court issued a proper order striking out the application. Hence, there is no error committed by this court to justify the grant of the application. He prayed the application to be dismissed with costs. In brief rejoinder, Mr. Mayenga reiterated his submission in chief and stated that, it came to be known latter that the Treasury Registrar, intended to be joined was not joined in the main case, intended to be restored. Thus, the Registrar of Treasury could not be joined at the time of application. For the interest of justice, he prayed this application to be granted. On the part of the first and second respondent, Ms. Matogorwa instantly conceded to the application. I have carefully gone through the submission by the counsel for the parties, grounds for review and the evidence on record, my task is 4 to determine whether the application has merit or otherwise. Before embarking to the determination of the application, I would wish to reproduce moving provision of the law that is section 78 (1) (b) together with Order XLII Rules 1(b) of the Civil Procedure Code, which has been used by the applicant to move this court. "78.(1) Subject to any conditions and limitations prescribed under section 77, any person considering himself aggrieved-
- (b) by a decree or order from which no appeal is allowed by this Code, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit. XLII (1) any person considering himself aggrieved-
 - (b) by a decree or order from which no appeal is allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order

made against him, may apply for a review of judgment to the court which passed the decree or made the order. 5 In the instant case, it is the argument by the counsel for the applicant that, the fact that Treasury Registrar was not joined in Land Case No. 156 of 2005 came to be known later. Thus, he could not be joined at the time of the application. However, I have taken a Judicial Notice in respect of the Amended Complaint and the dismissal order in Land Case No. 156 of 2005 attached in application No. 13268 of 2024 for restoration, I found that, the Registrar of Treasury was not part in Land Case No. 156 of 2005. Similarly, in tMisc. Land Application No. 662 of 2023, for extension of time to file an application for restoration. Thus, since from the institution of the main suit the Treasury Registrar was not a party, it would be improper to join him at the stage of the application for restoration of the suit. It is the legal requirement that, parties in subsequent judicial proceedings should remain as they were in former/ initial proceedings unless leave of the court is sought and obtained in other words proceedings should at any given time appear as they did in the previous proceedings, unless there is a reason for not observing that. For example, when a party, in a proceeding, dies before conclusion of a case, an administrator may be joined. I subscribe to the decision of the Court of Appeal in the case of Joseph Magombi vs. Tanzania 6 National Parks (TANAPA), (Civil Appeal 114 of 2016) [2021] TZCA 464 (14 September 2021) where it was *inter alia* stressed that, "..... We think and agree with the Judges in the case of William Godfrey Urassa (*supra*) that the parties who featured in the initial proceedings should be the same parties featuring before the High Court as well as this Court. We further say, that unless a proper procedure has been followed to change or alter a name, no change of party's name should occur. Nothing convinces us that at any stage of the proceedings in the present situation a change of a party's name was entertained. The change of names in the present appeal is thus unjustified." Since it is plainly clear from the records of the Court that, the Registrar of Treasury was not a party to the said Land Case and Application for extension of time, it follows that, in the application before me, in my considered view and as rightly argued by Mr. Mayenga, there was no non-joinder of the Treasury Registrar. The issue of non-joinder of the Treasury Registrar so raised by the applicant's counsel was thus prematurely raised and considered. Regarding the issue on whether this application deserves to be granted or not, I have noted that, on 10th July 2024, when Miscellaneous Land Application was called for mention, Mr. Magori Nyamoyo, the 7 learned counsel for the applicant mistakenly addressed the court on the issue of failure to join the Registrar of Treasury and prayed to have the application withdrawn. It was not the Court, which raised the issue of nonjoinder of the TR as purportedly argued by the applicant's counsel. Always the records of the courts prevail over anything that transpired during proceedings. It has been settled law that, a court record is always presumed to accurately represent what actually transpired in court. (See the decision of the Court of Appeal of Tanzania stressing the sanctity of the court record in *Alex Ndendya vs. Republic* (Criminal Appeal No. 207 of 2018). The court records also reveal that, subsequent to the applicant's prayer of withdrawal, the court mistakenly strike out the application based on the said reason of nonjoinder of the necessary party (TR) as advanced by Mr. Nyamoyo. Therefore, the applicant's advocate wrongly moved the court. In my considered view, upon request by the plaintiff or applicant

to withdraw a matter before a court of law, in law, the court is obliged to withdraw the matter as sought by such plaintiff or applicant notwithstanding that, the defendant or respondent, has filed his written statement of defence or his counter affidavit. 8 However, had the court together with the parties' counsel present exercised due diligence the order striking out the applicant's application could not have been made. Therefore, the prayer of withdrawal followed by the court order on the ground of the non-joinder of the Treasury Registrar of the mistake or misapprehension of the proper procedure pertaining change of parties in judicial proceedings. Henceforth, the order is reviewable under Order XLII Rule 1 (b) of the Civil Procedure Code (supra). Consequently, I find the application is meritorious, it is thus hereby granted. The applicant's Miscellaneous Application No. 13268 of 2024 is reinstated. Following the legal misdirection on the part of the applicant's counsel for the applicant, costs of this application shall be borne by the applicant due to misdirection done by his counsel. It is so ordered dated and delivered at Dar es salaam this 30th September 2024
JUDGE 9 Court: Ruling rendered in the presence of Ms. Happiness Mkude H/B of Mr. Mayenga, the learned advocate for the applicant (Ms. Rahama Ahmed-MD), Ms. Victoria Gregory for the 2nd respondent and in the absence of the 1st and 3rd respondent M. R. GWAE JUDGE 30/09/2024

Orders:

1. Hearing of Miscellaneous Land Application No. 13268 of 2024 on 17/010/2024 at 09:00 hrs
2. Parties shall appear
3. Electronic restoration and tracing of hard copy of the file be done prior to the date fixed for hearing JUDGE 30/09/2024 io

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/318843/source_file/cb8e86b6a8fa2eee/APPLICATION_NO_17294_OF_2024_SCANNED.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/afroplus-industries-ltd-Reviewofcourtorders-tanzlii-2024--6a3ea52d3b1caa9129826d25

Prepared on 14 October 2026 · Esheria