

TANZANIA / JUDGMENT

18769 OF 2024 scanned

COURT
TANZLIIDECIDED
1 January 2024

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

IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC. LAND APPLICATION NO.18769 OF 2024 (Arising from Land Case No. 241 of 2015 and Execution No.4 of 2019) WILLY KIONA.....1st APPLICANT RICHARD KIHAALE.....2nd APPLICANT JUMA MAKORONGO..... 3rd APPLICANT FANCIS KIGOMBA.....4th APPLICANT ZAWADI AMENYE KAKUMBULA..... 5TM APPLICANT JOSEPH URAHA KAPWANI..... 6TM APPLICANT VICENT MKOMEZI.....7th APPLICANT LUCY OTTARU..... 8th APPLICANT PAULA MCHENYA..... 9TM APPLICANT AMINIEL MUSHI..... 10TM APPLICANT CRESPO HEZLON..... 11TM APPLICANT JOHN OTTARU..... 12TM APPLICANT GILBERT THOMAS MMASSY.....13TM APPLICANT IGAU MUSHI..... 14TM APPLICANT IRENE MMARI..... 15TM APPLICANT BEN CHITENJE..... 16TM APPLICANT OMIRIKI MGAYA..... 17TM APPLICANT JOSEPH LYAKULWA..... 18TM APPLICANT NASSORO MTOKOMA..... 19TM APPLICANT EVANCE TARIMO..... 20TM APPLICANT RUSUNGU MUSTARA..... 21st APPLICANT MAHOHO YUSUPH MRISHO..... 22nd APPLICANT HELENA MMBANDO.....23rd APPLICANT 1 BURUANIHASSAN 24th APPLICANT ALLY ABDALLAH 25th APPLICANT ARISTOTE KAGOMBE 26th APPLICANT EMMANUEL TEMBA 27th APPLICANT JOKTAN ASUBISYE 28th APPLICANT FLORIAN MLAY 29th APPLICANT YOHANA MASWAYAGA 30TM APPLICANT MWISHUMU SAID 31st APPLICANT MASUDIADAM 32nd APPLICANT JENIPHA MWISHAGALA 33rd APPLICANT SUZAN MMARI 34th APPLICANT FRORENCE RUGULU 35th APPLICANT HAMIDU SELEMANI .36TM APPLICANT DANIEL MAMUYA.... ,37TM APPLICANT BRUNO SEVERINI... 38TM APPLICANT SONDA SHABANI.... .39TM APPLICANT DANIEL PETER..... ...40TM APPLICANT GRACE SANGA 41st

APPLICANT ELIAS NDAHANI 42nd APPLICANT AGNES MPINGA ,43rd APPLICANT AGNES CHARLES 44TM APPLICANT ELIAMENI MKONYI 45TM APPLICANT STEPHANO MWALIMU 46TM APPLICANT SUDI SALUM 47TM APPLICANT HILARY MASUMAY 48TM APPLICANT PARUKU ISSAH 49TM APPLICANT HAJI MDOE 50TM APPLICANT BURUHAN YAHYA 51st APPLICANT NTEMI NYANDA 52nd APPLICANT 2 OTHUMAN 53rd APPLICANT JOEL NHAU 54th APPLICANT TWIKE MWAKITANGE 55th APPLICANT SALUM ALFAN 56th APPLICANT JULIUS CHAKI 57th APPLICANT BINTI SULEMAN 58th APPLICANT AGUSTA NGONYANI 59th APPLICANT RIGHTNESS CHINA 60th APPLICANT MARKO OTTARU 61st APPLICANT VERONICA KILENGA 62nd APPLICANT LEGANI 63rd APPLICANT STEPHANO LUTHA 64 TH APPLICANT MR SIMBA 65TM APPLICANT JAMES MBUYA 66th APPLICANT OMARY KUZULU 67TM APPLICANT BAGANCHELA LUTAMBUKO 68th APPLICANT REJEA SANWEL NGODA 69th APPLICANT BEN SAMWEL 70TM APPLICANT CLARA KULA YA 71st APPLICANT VICENT KIMARO 72nd APPLICANT THOBIAS BUSHIRIMA 73rd APPLICANT MAGRETH AYUDI 74TM APPLICANT OMARYTULA 75TM APPLICANT ABDUL SAID 76TM APPLICANT ANGELA GUAMBADE 77th APPLICANT JOSEPH GUAMBADE 78th APPLICANT ANGELINA MTEI 79TM APPLICANT JOHN SHAYO 80TM APPLICANT AZIZ KAUNGA 81st APPLICANT 3 FLORAH SILAS ,82nd APPLICANT KAIMBE KAMBE 83rd APPLICANT CHRISTOPHER MAFOLE 84th APPLICANT GERALD MAGARATA 85th APPLICANT MAPALA LA 86th APPLICANT EDEN MACHA 87TM APPLICANT EMMANUEL NG'AIDA 88th APPLICANT GODLUCK MANGIA 89TM APPLICANT HAMIS MWICHANDE 90TM APPLICANT MSUSE MSIAJOSE 91st APPLICANT RAYAH SULEMAN ,92nd APPLICANT SHAKURU KASIMU ,93rd APPLICANT OMARY MASUDI 94TM APPLICANT ROJAS LIBONDOKA ,95th APPLICANT EVARIST STEPHANO ,96th APPLICANT MUSA ZIMBEYE 97TM APPLICANT JORAM MUSA 98TM APPLICANT EDWARD MABULA 99th APPLICANT A.MWINGIRA 100TM APPLICANT ABDALAH GONG'ONDO 101st APPLICANT JOSEPH SIMWINGA 102nd APPLICANT JOSEPH MZIZIMA 103rd APPLICANT CHACHA BIZE 104th APPLICANT MUSA SAID ABDALLAH 105th APPLICANT MICHAEL MBAGO 106TM APPLICANT DEUS KWAYA 107th APPLICANT MUHAMED LUSHAKA 108TM APPLICANT NASSOR ALLY 109TM APPLICANT CLEMENT SHAYO 110TM APPLICANT 4 SELEMANI KALOLO..... 111TMAPPLICANT RICH MAANDAZI..... 112TMAPPLICANT REHEMA SAMAI..... 113TMAPPLICANT DAVID LUBEREGE..... 114TMAPPLICANT JEROME MMASI..... 115TMAPPLICANT BINTI AMBROSE..... 116TMAPPLICANT KISAUTI KISAUTI..... 117TMAPPLICANT ROSEMARY MATUMBA..... 118TMAPPLICANT LUCAS NAELEWA..... 119TMAPPLICANT ALEX MALAK MARUNDA..... 120TM APPLICANT SEMBUA MICHAEL..... 121stAPPLICANT STEPHANO ANDREW CATABIZY..... 122ndAPPLICANT MWANAIDI ABDALLAH JUMA..... 123rdAPPLICANT MIRAJI ALLY JOSEPH MAKUTA..... 124TMAPPLICANT GRACE NGONYANI..... 125TMAPPLICANT PETER

SHIRIMA..... 126TMAPPLICANT HAMOUD
KHAMIS..... 127TMAPPLICANT NIKUNDIWE MAKASA
KIBAJA..... 128TMAPPLICANT ALLY JUMA ZAINAB
SAID.....129TMAPPLICANT WISTON
ELISHA..... 130TMAPPLICANT NATHAN
MUTA..... 131stAPPLICANT VENANCE
MWANJABALA..... 132ndAPPLICANT ABDALLAH
MUNISI..... 133rdAPPLICANT SELEMANI
FADHILI..... 134TMAPPLICANT CYRIL
MRINA.....135TMAPPLICANT HARY
BALIXA.....136TMAPPLICANT ELIGIUS
ATHANAS.....137TMAPPLICANT HABIBA
JUMA.....138TMAPPLICANT ALFRED
NGOWI..... 139TMAPPLICANT 5 RACHAL
SAMWEL.....140TM APPLICANT ROUJASE HALIMA
NDENDEGU.....141st APPLICANT OMARY SULEMAN.....
142nd APPLICANT JENIPHAER M DIN KA..... 143rd APPLICANT
REGISTERED TRUSTEES OF KANISA LA MAOMBI.144TM APPLICANT SHOMA ALLY
SHOMAR..... 145TMAPPLICANT GRACE
NGOWI..... 146TMAPPLICANT FREDY
KIKOTI..... 147TMAPPLICANT PAUL
NJAU..... 148TMAPPLICANT SOPHIA
DOMINIAN.....149TMAPPLICANT
BANTU..... ISOTMAPPLICANT DANIEL
BOAZ..... 151stAPPLICANT ISAAC
SHIRIMA..... 152ndAPPLICANT RAJABU
CHAMBA..... 153rdAPPLICANT NAOMI
RICHARD..... 154TM APPLICANT ELIREHEMA
MUSHI.....155TMAPPLICANT ADINA HUSSEIN
ISSA..... 156TMAPPLICANT HOSEA
KAKWAYA..... 157TMAPPLICANT NOEL
MAKUNDI..... 158TMAPPLICANT ATHANAS
LUKINDO.....159TMAPPLICANT ANGEL STANLEY
MTUI..... 160TMAPPLICANT ALLY
AHMED.....161stAPPLICANT RICHARD
KOKOLO..... 162ndAPPLICANT KASIAN SISTANTINA
LUHANGA..... 163rdAPPLICANT BENERD
NTABALIBWA..... 164TMAPPLICANT NURU
ZEGEGA.....165TMAPPLICANT GRACE
MATIKO..... 166TMAPPLICANT MATHEW
KAGARUKI..... 167TMAPPLICANT FABIAN
CHADALALA..... 168TMAPPLICANT 6 MARUNDA

ARAFA..... 169TM APPLICANT REAGAN
MKUTWA..... 170TM APPLICANT FARAJA
BRIGHTON..... 171st APPLICANT EMMANUEL
SALALA..... 172nd APPLICANT LUCAS
BISSE..... 173rd APPLICANT BONIPHACE JOSEPH
KIGANDO..... 174TM APPLICANT VERONICA
TESHA..... 175TM APPLICANT FANUEL
SIMBEYE..... 176TM APPLICANT ELIUD
MWANAKATWE..... 177TM APPLICANT JORAM
LUPANDE..... 178TM APPLICANT NEEMA
KAIMBE..... 179TM APPLICANT JIRAM
KAIMBE..... 180TM APPLICANT EMMANUEL
FABIANO..... 181st APPLICANT GABRIEL
MZINGO..... 182nd APPLICANT FOIBE
LUPEMBE..... 183rd APPLICANT FREDY
MOSHI..... 184TM APPLICANT KHEDIRA
LIKO..... 185TM APPLICANT MARK
PAMELA..... 186TM APPLICANT ATHUMANI
ZODO..... 187TM APPLICANT MASUMAI
HILARY..... 188TM APPLICANT JIRAN
MTOKOMA..... 189TM APPLICANT RUNGU
MUSTAPHA..... 190TM APPLICANT
EDRIN..... 191st APPLICANT
AIDESA..... 192nd APPLICANT MAGDALENA
ZANGILA..... 193rd APPLICANT ABEID
FARAHANI..... 194TM APPLICANT WAKYO JAMES
MUSONG'0..... 195TM APPLICANT ABDULI
CHANDE..... 196TM APPLICANT
JOSEPH..... 197TM APPLICANT 7 REGINADY
URRASA..... 198TM APPLICANT
JAGURI..... 199TM APPLICANT NEEMA
JOSEPH..... 200TM APPLICANT FELISTER
MSIGALA..... 201st APPLICANT LUCAS
AMBROSE..... 202nd APPLICANT SUBIRA
OTTARU..... 203rd APPLICANT NEEMA VALENTINE
KOMBA..... 204TM APPLICANT ATUSA BONIFACE MUSHI.....
203rd APPLICANT ANDREW WILSON WERE..... 204TM APPLICANT NEEMA
WILSON KOMBA..... 205TM APPLICANT HAMADI ABDALLAH
NGANDALI..... 206TM APPLICANT ZAINAB SAID.....
207TM APPLICANT STIGMATA MILTON MAKUNDI..... 208TM APPLICANT COLLETA
ALLEX MGETWA..... 209TM APPLICANT MWANAHARI SAID
MOHAMMED..... 210TM APPLICANT AMIDA BADRU

MIKIDADI..... 211TM APPLICANT GEORGE WILLIAM
 MUGUSA..... 212TM APPLICANT STEPHEN MATUA
 MUGASA..... 213TM APPLICANT SUBIRA OTTARU.....
 214TM APPLICANT MATINE PETER JOSEPH..... 215TM APPLICANT
 ELISHA IGNASTUS SWAI.....216TM APPLICANT PAULI PAUL
 NACHENGA..... 217TM APPLICANT VERSUS ABUBAKAR SHEBU
 MSHIHIRI..... 1stRESPONDENT LILIAN CLEMENT
 MDOE..... 2ndRESPONDENT

RULING

16/10/2024 & 31/10/2024 A, MSAFIRI J 8 This is an application brought under Order XXI Rule 57 (1) and Rule 59 of the Civil Procedure Code, [Cap 33 RE 2019] (herein the CPC). The applicants are jointly moving this court for the following orders that; First, this court be pleased to investigate the correctness of attachment of the landed property subject of the original proceedings whether belongs to applicants who were not party of the original suit; Second, having done the investigation, this court should declare that the applicants are not subject of the proceeding as the respondents have never sued them for claim of land which now the respondents are claiming to possess by order of this Court while they sued different persons by their names. Third, having declared the Respondents intended eviction illegal, null and void, the Respondents be ordered to refrain from entering, dealing or evicting the Respondents from the said land in whatsoever manner and any other relief the court deems fit to grant. The application was made by way of chamber summons, supported by a joint affidavit by the applicants. The application was opposed by the counter affidavits deponed jointly by the respondents. Along with their counter affidavit, the respondents filed the notice of preliminary objection with seven (7) points of law as follows: -

k 9

1. This Application is incompetent in law as it is supported by an affidavit which has a lot of legal (supra) anomalies named;
 - a) While only 2d persons named as Applicants on the top of the affidavit in its verification it is verified with a list 127 persons.
 - b) Having such contradicting number of applicants in the affidavit the verification of the affidavit is not signed by any applicant.
 - c) The jurat clause is not signed by a number of persons including MAPALALA, MSUSE, MSIAJOSE, MUSA ZIMBEYE, SUBIRA OTARU, SEMBUA MICHAEL, KISAUTIKISAUTI, JIRAN MTOKOMA EDRIN, AIDESA JOSEPH JAGURI.
 - d) It is not indicated as whether the Applicants are alive and they appeared physically before the Commissioner for Oaths or not.
 - e) It is not known as whether the applicant are deponents or not.

2. This Application being one which is arising from Land Case No. 211 of 2015 and Execution NO. 4 of 2024 is fatally misconceived and is affected for being omnibus application.
3. This application is not competent by not giving the description of the land against which this application is based.
4. The Application being one which arise from Land Case No. 241 of 2015 which was decided in 2018 then this application is time barred. io
5. This application is incompetent by not attaching the decree and order which is sought to be impugned.
6. The applicants have no locus standi in the matter.
7. The Applicants' land being a surveyed as Farm No. 1291 with Certificate of Title No. 43852 and another measured 16.722 Hectors and another being designated as farm No. 1292 with certificate of Title No. 44144 all located at Kiharaka in Mapinga Village Bagamoyo District in Coast Region then the applicants cannot establish any claims against the applicant (supra) without joining the land Allocating Authority who allocated the /and to the Respondents and has never revoked the same. Hearing of the preliminary objections was by way of written submissions. Mr Isaac Nassor Tasinga, learned counsel drafted and filed submissions in chief and rejoinder for respondents while Meremeta Law Chamber drafted and filed reply submissions for the applicants. I will not reproduce all of what was submitted by the rival parties but I have well taken consideration of the submissions and the authorities cited in support of the submissions. In determination of the preliminary points of objection, I will start with the first point which states that the application is incompetent as it is supported by the affidavit which has a lot of illegal anomalies. Ij ii It is the submission of Mr Tasinga, counsel for the respondents that the affidavit shows 24 applicants only, while in the verification clause, it is verified with a list of 127 who also calls themselves the applicants. Furthermore, the verification clause is not signed at all and the Jurat clause is not signed by some of the people named as the applicants. He further argued that the consequence for failure to sign an affidavit by the applicants renders the whole affidavit inoperative, as stated in the case of Melau Mauna and 24 Others vs The Registered Trustees of Evangelical Lutheran Church in Tanzania Arusha Diocese, Civil Application No. 89/02 of 2021 Court of Appeal of Tanzania. In reply, the counsel for the applicants argued that there was a scanning error where some pages were skipped by the system scanner only on the front pages but were properly scanned for all other pages. The counsel further stated that the applicants signed the documents which were filed in Court as required and very few Applicants did not sign. The counsel said that those all who did not sign have automatically deleted themselves from the application and the remedy is to delete them from the court records. The counsel urged the court to look into the matter on point of justice rather than technicality and that the court in different decisions has allowed the amendments of the affidavits in cases of minor defects. To 12 support this point, the counsel for the applicants cited the case of Evangelical Church of Tanzania vs Uchumi Commercial Bank Ltd & Others, Misc. Civil

Application No. 173 of 2022 where the court allowed the amendment of the affidavit to meet the ends of justice. In determining this point preliminary objection, the issue is whether there are fatal anomalies in the affidavit supporting the application as to render the application incompetent before the court. In the case of The Director of Public Prosecutions vs Dodoli Kapufi and Another, Criminal Application No 11 of 2008, the Court of Appeal stated the essential ingredients of a valid affidavit which include:

- (i) the statement or declaration of facts etc by the deponent;
 - (2) the verification clause;
 - (3) a jurat; and
 - (4) the signatures of the deponent and the person who in law is authorized either to administer the oath or to accept the affirmation...." From the above ingredients, it is obvious that an affidavit must be verified by the deponent on what is true based on personal knowledge, belief or information. Also, the deponent is obliged to disclose the source of information other than that of own knowledge if any and the affidavit must be signed by the deponent.
- frf1 L 13 Having gone through the affidavit supporting the application, I find that the affidavit has fatal defects because first, the jurat clause is not signed by the number of persons including 19th 86th, 91st, 92nd 97th 117th, 121st, 189th 199th and 203rd deponents. The Court of Appeal stated the effects of the failure to sign an affidavit in the case of Director of Public Prosecutions v. Dodoli Kapufi and Another, (supra), where it held thus:-
- "Fortunately, there is no dispute here on the fact that the affidavit in support of the notice of motion is defective for want of the deponent's signature thereon. In our respectful opinion, this defect renders the so- called affidavit of Mr. Edgar Luoga incurably defective, as correctly contended by Mr. Mushokorwa. This in turn renders the entire notice of motion incurably defective. We accordingly expunge it from the record. Once the notice of motion is expunged with all its annexures the application for review is left with no leg to stand on. The purported application becomes incompetent in law. It is only fit to be struck out as we hereby do../z Again, in the Court of Appeal in the case of Melau Mauna and 24 Others vs The Registered Trustees of Evangelical Lutheran Church in Tanzania Arusha Diocese(supra), it was held that;- 14 w,, it is undeniable that the two applicants have not signed the joint affidavit and from the above excerpt, the omission renders the affidavit in support of the notice of motion incurably defective and the application is fit to be struck out. " In the instant application, it is undisputed fact that 19th 86th, 91st, 92nd 97th 117th, 121st, 189th 199th and 203rd applicants have not signed the joint affidavit and from the above excerpt, the omission renders the affidavit in support of the application incurably defective and the application is fit to be struck out. Second, the names of the applicants in the title of the affidavit are only 24 while other 192 are skipped and have not appeared in the title of the affidavit. This creates contradiction between the number of the applicants that appears in the affidavit as the applicants and the number of the people shown in the verification clause. The number appearing in the affidavit are 24 people while the number of the people in the verification clause are 127 people. The counsel of the applicant has argued that the

defectiveness/ omissions in the affidavit of the applicants are just on technicalities and can be amended and the people who have not signed can be deleted from the court records. However, I find the omissions to be fatal as to render the whole application incompetent. The contradiction in the number of the 15 people shown in the affidavit as against the people shown in the verification clause is fatal as it is not known who are the real applicants in the application and whether all the applicants deponed before the Commissioner for Oaths as per the requirement of the law. By the contradicting affidavit, it is not clear whose parties have interest in the subject matter. I find the first point of objection to have merit and I find that the anomalies in the affidavit of the applicants have rendered the whole application to be incompetent and the remedy is to strike it out. Since the first point suffices to dispose of the matter, I will not go into determination of the remaining points of objection. The instant application is struck out with costs. It is so ordered. A. MSAFIRI
JUDGE 31/10/2024 16

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/322657/ source_file/2628f1438c88c52f/18769_OF_2024_scanned.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/willy-kiona-and-214-others-v-abubakar-shebu- mshihiri-Affidavitdefects-tanzlii-2024--6a3ea52d3b1caa9129826eb3

Prepared on 13 October 2026 · Esheria