

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA SUB - REGISTRY)

AT TANGA

MISC. LAND APPLICATION NO. 63 OF 2023

HOSSEIN SAID MWAKANGULA APPLICANT

VERSUS

YUSUPH OMARY SANGOMELORESPONDENT

RULING

26th Feb & 13th March, 2024

M.J. Chaba, J.

By way of chamber summons, the applicant has moved this Court under sections 96 and 95 both of the Civil Procedure Code [CAP. 33 R.E. 2019] for amendments of a judgment, decree and any other orders stems therein. It is supported by an affidavit affirmed by the applicant, Hossein Said Mwakangula.

Basically, the applicant is seeking for the following orders: -

1. That, this Honorable Court be pleased to correct clerical mistakes and or errors arose from accidental slip onto the Judgment and Decree in Land Appeal No. 36 of 2022 delivered on 10th March, 2023, specifically, on page 15/15, 2nd paragraph, 2nd line from above, onto which the word "appellant" was erroneously typed, as such, instead, ought to read "respondent";
2. Costs to follow the event; and

3. Any other order(s) as this Court deems necessary to grant.

At first, the applicant, Hossein Said Mwakangula (respondent) and the respondent, Yusuph Omary Sangomelo (appellant) had a land matter in this Court before my brother Hon. F.K. Manyanda, J., registered as Land Appeal No. 36 of 2022. Being a second appeal, the matter involved a land dispute between the respondent herein (Sangomelo) and the applicant herein (Mwakangula) which was instituted at the Ward Tribunal for Negero in Kilindi District, where the respondent (Sangomelo) sued the applicant (Mwakangula) for trespassing into his farm land allegedly acquired from his deceased father. It was Sangomelo's complaint that Mwakangula slashed his farm and wanted to conduct agricultural activities therein with his family alleging to be a lawful owner. At the end of the day, the trial Ward Tribunal decided in favour of the applicant, Mwakangula. Aggrieved, the respondent, Sangomelo unsuccessfully appealed to the DLHT for Kilindi, at Songe. Undaunted, the respondent, Sangomelo decided to appeal to this Court via Land Appeal No. 36 of 2022 (which is the subject of this application) before my brother Hon. F.K. Manyanda, J.

At the culmination of trial, the appeal filed by the respondent (Sangomelo) was dismissed on 10th March, 2023, and the judgment and decree of the first Appellate Tribunal, that is The District Land and Housing Tribunal for Kilindi, at Songe was upheld save for order awarding ownership of the disputes land to the

applicant / respondent, Hossein Said Mwakangula and "others". In addition, the Court further varied that order of the Ward Tribunal and the District Land and Housing Tribunal for Kilindi, at Songe regarding award of ownership and order that, **the appellant, who ought to be recorded or read as respondent, one Hossein Said Mwakangula should continue to use and enjoy occupation of the disputed land in the manner as he was, being a person against whom the estate devolves.** [Bold is mine]. The Court ordered the appellant, Sangomelo to bear costs.

It is on the basis of the above decision of this Court in particular the word **appellant** which ought to be recorded or read as **respondent** (Hossein Said Mwakangula) prompted the applicant to knock the door of this Court by way of chamber summons moving the Court to grant the orders sought in the chamber summons as hinted hereinabove.

At the hearing of this application, I ordered the matter to proceed *ex-parte* against the respondent (Sangomeloro) upon satisfying myself that, the respondent deliberately refused service of summons, and thus declined to attend and enter appearance in this Court on the ground that the matter has been conclusively determined in its finality. Hence, hearing of the application was conducted by way of oral submission and the applicant simply reiterated his prayers in the Chamber summons and adopted his affidavit to form part of his oral submission.

I have impassively considered the applicant's concern and carefully read the judgment and decree delivered on 10th March, 2023 by this Court (Manyanda, J.) in Land Appeal No. 36 of 2022. At the outset, I see no need to decline to grant the order sought by the applicant for obvious reason that the clerical error noticed by the applicant, Mwakangula in the judgment and decree of this Court is curable. Sections 96 of the CPC provides that:

"Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the court either of its own motion or on the application of any of the parties.

On the other hand, section 95 of the CPC articulates that:

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court".

Application of section 96 of the CPC has been interpreted in a number decisions including the decision of the Court of Appeal of Tanzania (the CAT) in the case of **NIC Bank Tanzania Limited & Another vs. Samora Mchuma Samora Co. Ltd (Civil Appeal No. 340 of 2020) [2023] TZCA 76 (28 February 2023)** and **Christina Mrimi vs. Coca Cola Kwanza Bottlers Ltd**



(Civil Application 113 of 2011) [2012] TZCA 1 (3 May 2012) [extracted from www.tanzlii.go.tz]. In the case of **NIC Bank Tanzania Limited & Another vs. Samora Mchuma Samora Co. Ltd**, the CAT held *inter-alia* that:

"Under s. 96 of the CPC, a judgment may only be corrected if it contains clerical or arithmetical mistakes Such correction may be done by way of a separate order, not by formulating a corrected version of the judgment...."

Corresponding observation was made by the CAT in the case of **Christina Mrimi vs. Coca Cola Kwanza Bottlers Ltd (supra)** where the Court observed that:

".....We are satisfied that it is just to correct the name of the Respondent from Coca Cola Kwanza Bottlers Ltd. to Coca Cola Kwanza Ltd in the decision of the Court dated 19th February, 2009 in Civil Appeal No. 112 of 2008. The review is accordingly allowed"

On the strength of section 96 of the CPC and the precedents from the CAT cited hereinabove, which I subscribe to, I find and hold that the word "appellant" as it appears specifically on page 15 of 15, 2nd paragraph, 2nd line from above onto which the "appellant" was erroneously typed, as such instead ought to read "respondent" in the judgment of this Court delivered on 10th day of March, 2023

by my brother Hon. F.K. Manyanda, J., in Land Appeal No. 36 of 2022 be replaced by the word "respondent" so as to reflect the substance of the judgment constructed by this Court. Considering the nature of the application itself, each party shall bear its own costs. It is so ordered.

DATED at **TANGA** this 13th day of March, 2024.



A handwritten signature in black ink, appearing to read "M.J. Chaba", is written over the seal.

M.J. Chaba

Judge

13/03/2024

Court:

Ruling delivered under my Hand and the Seal of the Court in Chambers this 13th day of March, 2024 in the presence of the Applicant and in the absence of the Respondent.



A handwritten signature in blue ink, appearing to read "B. Nyaki".

Beda R. Nyaki

Deputy Registrar

13/03/2024

Court:

Rights of the parties to appeal to the Court of Appeal of Tanzania fully explained.



A handwritten signature in blue ink, appearing to read "B. Nyaki".

Beda R. Nyaki

Deputy Registrar

13/03/2024