IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWANDAMBO, J.A., ISSA, J.A., And ISMAIL, J.A.)

CIVIL APPLICATION NO. 640/16 OF 2023

THE ATTORNEY GENERAL ..... 1ST APPLICANT

REGISTRAR OF COMPANIES ..... 2ND APPLICANT

VERSUS

DHIRAJILAL WALJI LADWA ..... 1ST RESPONDENT

CHANDULAL WALJI ..... 2ND RESPONDENT

NILESH JAYANTILAL LADWA ..... 3RD RESPONDENT

JITESH JAYANTILAL LADWA ..... 4TH RESPONDENT

INDIAN OCEAN HOTELS LIMITED ..... 5TH RESPONDENT

(Application for revision from the ruling of the High Court of Tanzania (Commercial Division) at Dar es Salaam)

(Nangela, J.)

dated 30th day of June, 2023

in

Misc. Commercial Application No. 62 of 2020

RULING

8th & 14th November, 2023

ISMAIL J.A.:

In a classic example of a business relationship torn asunder, the 1st to 4th respondents, directors and shareholders in a family business empire, find themselves in an unenviable position of having to spend their time and fortune pursuing multiple court actions. These actions are an attempt by

disputants to wrestle control of the said empire from each other. In the instant application they, along with the 5th respondent, a company in which they hold a stake, are impleaded as respondents.

The applicants are the Attorney General and the Registrar of Companies who have come to this Court by way of revision. They are moving the Court to revise the ruling and order issued by the High Court (Commercial Division) delivered on 30th June, 2023. This decision emanated from an application for injunctive orders instituted as Miscellaneous Commercial Application No. 62 of 2020. The instant application, preferred by way of a Notice of Motion, is made in pursuance of the provisions of section 4 (2) and (3) of the Appellate Jurisdiction Act ("AJA"), and rule 65 (1) and (3) of the Tanzania Court of Appeal Rules, 2009 ("the Rules"). It is supported by an affidavit sworn by Meinrad T. Rweyemamu, the 2nd applicant's Acting Registrar of Companies. The 1st, 2nd and 3rd respondents have affirmed a joint affidavit in which the applicants' prayers are valiantly opposed. The joint depositions by the 4th and 5th respondents support the application.

For ease of appreciation of the instant matter, it is apposite that its genesis be narrated. In 1977, the 1st and 2nd respondents and Jayantilal Walji Ladwa, all of whom are siblings, incorporated a company going by the name

of Indian Ocean Hotels Limited; the 5th respondent. Each of these shareholders and directors acquired 10 shares which were increased over time. Years later, Jayantilal Walji Ladwa, who has since died, transferred his stake in the company to his two sons, Nilesh Jayantilal Ladwa and Jitesh Jayantilal Ladwa; 3rd and 4th respondents respectively.

In the course of time, serious and apparently irreconcilable disagreements arose over the manner in which the affairs of the 5th respondent were being run, and the way the resources are shared. Feeling shortchanged, the 1st, 2nd and 3rd respondents enlisted the assistance of the High Court by commencing proceedings founded on an unfair prejudice. The proceedings were instituted in the High Court, Commercial Division and registered as Misc. Civil Cause No. 2 of 2020.

In the pendency of the said petition, that is, in 2018, the 2nd applicant issued a notice calling upon all companies to carry out updates of their data through an online registration system. Pursuant to the notice, the 4th respondent was issued with access rights which enabled him to key in and submit information to the 2nd applicant. The submitted information indicated various changes effected with respect to ownership structure of the 5th respondent. One notable change that raised the 1st and 3rd respondents'

eyebrows related to the number of shares held by the 4th respondent and his status in the company. Feeling jittery about what they considered to be unilateral and clandestine changes, an application for injunctive orders (Misc. Commercial Application No. 62 of 2020) was lodged. The most relevant of the reliefs in the said application are as reproduced hereunder:

> *"1. That, the Honourable Court be pleased to issue an order restoring the status quo ante the 16th day of April 2020 regarding activation of update of information regarding the 2nd respondent by the Registrar of Companies pending the hearing and final disposal of Misc. Commercial Cause No. 2 of 2020 ("the Petition").*
>
> *2. This Honourable Court grants such other interim preservatory orders or measures with regards to the shares of the Applicants in the Indian Ocean Hotels Limited as it may deem fit, just, and proper in the circumstance."*

In his ruling, the learned judge of the High Court was convinced that a case had been made out for grant of injunctive orders. In one of the reliefs, the High Court ordered as follows:

> *"That the Registrar of Companies is hereby directed to ensure that the status quo ante the 16th of April 2020 is maintained and any unilateral act done by the 1st*

respondent is reversed and reversal information is communicated to this Court."

It is this order that has triggered the disputation by the applicants hence the institution of the instant matter.

In the run up to the hearing date, the learned counsel for the 1st, 2nd and 3rd respondents filed a notice of preliminary objections challenging the competence of the application on two grounds. The grounds of objection were to the effect that:

1. *The application for revision before the Court is incompetent and an abuse of the Court process as there is a notice of appeal before the Court filed by the 4th and 5th respondents against the ruling and drawn order of the High Court Commercial Division the subject of this revision; and*
2. *The application for revision contravenes the mandatory requirements of section 4 (3) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 for want of inclusion of the proceedings to be revised hence ousting the jurisdiction of the Court.*

Hearing of the application pitted Messrs Camilius Ruhinda, Ayoub Gervas Sanga, Senior State Attorneys, Siyumwe Shabani Mubanga and Ms. Grace Umoti, learned State Attorneys, for the applicants, against Mr. Robert Rutaihwa, learned counsel for the 1st, 2nd and 3rd respondent, and Messrs

Jeremiah Mtobesya and Sisty Bernard, learned advocates for the 4th and 5th respondents.

To expedite disposal of the matter we guided that arguments should target the preliminary points of objection and the substance of the application, and that the Court would then determine the matter by first addressing the plight of the objections. Should the Court find them to be meritorious, the application would be nipped in the bud and end the contest there and then. If not, the Court would delve into the application and determine its merits.

Mr. Rutaihwa was accorded the usual privilege of setting the ball rolling. With regards to the first ground of objection, he contended that there is a pending notice of appeal filed by the 4th and 5th respondents. It signals their intention to challenge the impugned ruling. Since the notice is a step towards the institution of the appeal then the remedy of revision cannot be pursued. The learned advocate argued that the only available option is for the applicants to join in the appeal process and pursue it to its conclusion. To buttress his argument, Mr. Rutaihwa urged us to take the path that we took in the case of the **Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 467/17 of 2016 (unreported).

Submitting on the second ground of objection, Mr. Rutaihwa invited us to join him in faulting the competence of the application whose filing has offended section 4 (3) of the AJA which requires that an application for revision be accompanied by copies of the proceedings. He contended that these vital documents are missing in the instant application. In the learned counsel's view, absence of the said documents means that the Court has nothing to revise. To bolster his argument, Mr. Rutaihwa referred us to a couple of cases. These are: **Mohamed Rabii Honde (as the administrator of the Estate of the late RABII ISMAIL HONDE (deceased) v. Hamida Ismail Honde & 11 Others**, Civil Application No. 461 of 2017; and **Nundu Omar Rashid v. Returning Officer Tanga Constituency in Tanga City & 2 Others**, Civil Application No. 3 of 2016 (both unreported). Learned counsel implored upon us to strike out the application with costs.

In his rebuttal submission, Mr. Sanga took a serious exception to his counterpart's argument on the first ground of objection. He argued that the applicants were not involved in the application that bred the notice of appeal to this Court. They cannot, as a matter of law, be parties to the impending appeal and that the only remedy for them is revision. He argued that the bar

against any other action than an appeal can only apply where one of the parties has initiated revisional proceedings in the pendency of the notice of appeal that one or more of the parties has instituted.

Regarding the **Tanzania Ports Authority's** case, Mr. Sanga's contention is that, unlike the instant matter, in that case, the Tanzania Ports Authority was a party to the proceedings from which an appeal process was initiated through a notice. It is why the Attorney General was castigated for his decision to commence revisional proceedings as he had an opportunity to seek to join in the impending appeal. He was emphatic that in this matter the Attorney General was not there to defend interests of the 4th and 5th respondents. Neither did the Attorney General hold any interest in the 5th respondent. This rules out intervention by the Attorney General in any other way than through revision.

With regards to failure to failure to attach a copy of the proceedings, Mr. Sanga's take is that their only qualm is on the ruling of the High Court and that in the peculiarity of circumstances of this case, attachment of a copy of the ruling serves the purpose. He maintained that the essence of attaching the lower court's record is to enable the Court to know what transpired during trial and appreciate the nature of the complaints by the

applicants. It was his contention that denial of the right to be heard can be demonstrated without necessarily having a copy of the proceedings. In any case, Mr. Sanga argued, this is a curable error, and he urged us to act *suo motu* and order rectification as we guided in the case of **Chama Cha Walimu Tanzania v. Attorney General**, Civil Application No. 151 of 2008 [2008] TZCA (11 November 2008), TANZLII.

In rejoinder, Mr. Rutaihwa maintained that, since the notice of appeal by the 4th and 5th respondents is yet to be withdrawn, the appeal process is alive and kicking, and that the bar against revisional proceedings applies even where the Attorney General is not a party. He picked the case of **Tanzania Ports Authority** (supra) and argued that in that case, the Attorney General was a non-party who came at a later stage.

In respect of the failure to attach a copy of the proceedings, Mr. Rutaihwa maintained that powers of the Court under section 4 (3) of the AJA are only exercisable where proceedings are in place, precisely because revision entails examining the proceedings. He took the view that the cases cited pointed to the fact that the requirement is imperative, and that in their absence, the Court's power, authority or jurisdiction are rendered impracticable. He sought to draw a distinction between the **Chama Cha**

Walimu case (supra) and the instant case as he thought that the two are distinguishable.

We have scrupulously reviewed the rival submissions and are now ready to address the issues on which the counsel are at loggerheads. Regarding the first ground of objection, Mr. Rutaihwa's contention is that the application has been instituted while a notice of appeal filed by 4th and 5th respondents is alive and kicking in this Court. In his view, the appropriate course of action is to seek to join in the impending appeal. Mr. Sanga is not convinced that such is the way to go.

It is true that the position that the Court has maintained over the time is that a party who institutes a notice of appeal to signal his intention to challenge a decision on appeal cannot ride a second horse by preferring another form of challenge such as revision. The decisions referred to us by Mr. Rutaihwa are but a few of multitude of the Court's consistent pronouncements. Thus, in the case of **Tanzania Ports Authority** (supra) cited by Mr. Rutaihwa, we accentuated this position in the following words:

> *".... to allow a party to prosecute an application for revision where one of the parties has initiated the process towards lodging the appeal is to cause*

confusion in the administration of justice. We held a firm view that this applies even where the applicant was not a party to the impugned proceedings before the lower court or tribunal. In the present application, the observation is sounder as the applicant seeks to defend the same interest of the first respondent who is wholly owned by the Government and has initiated the process to challenge the decision by lodging the notice of appeal."

Instructively, the foregoing position of the Court was an emphasis to a long held position as was enunciated in **Hallais Pro-Chemie v. Wella A.G.** [1996] T.L.R. 269, in which it was stated, in part, as follows:

"Except under exceptional circumstances, a party to proceedings in the High Court cannot invoke the revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court."

While the two excerpts cement what we consider to be an astute legal certainty in this respect, our unfleeting review of the facts in that case bring out a clear distinction from what obtains in the instant proceedings. In the case of **Tanzania Ports Authority** (supra), the Attorney General sought to intervene while the entity whose interest he sought to protect was a party

to the proceedings. It is why preference of revision to appeal whose notice was pending was considered to be in bad taste. In the instant case, as Mr. Sanga correctly submitted, the parties to Misc. Commercial Application No. 62 of 2020 are private persons who do not enjoy any right of representation through intervention in the impending appeal. There is no opening through which the 1st applicant would intervene and address the shortfalls that the applicants intend to take up on revision. The distinction in the sets of factual account in the two cases draws a divergence that renders the principle distilled from the decisions cited by Mr. Rutaihwa inapplicable in the instant matter. In consequence, we take the view and hold that this preliminary point of objection is devoid of merit and we overrule it.

Turning on to the second limb of objection, the disquiet by Mr. Rutaihwa resides in the applicants' failure to attach a copy of the proceedings of the High Court. In his view, that set of documents is mightily important such that their absence raises a jurisdictional issue as the exercise of the Court's revisional powers entails taking stock of the regularity or otherwise of the proceedings. This contention has been rebuffed by Mr. Sanga who is adamant that a copy of the ruling is, in the circumstances of this case, adequate to find faults committed by the High Court.

We are in agreement with Mr. Rutaihwa that attachment of copies of the proceedings is a prerequisite in an application for revision, and the rationale behind this requirement is not far to seek. It is simply to enable the Court to gauge the regularity of the proceedings as a basis for pronouncing itself on the points of divergence raised by the parties. Where our path departs from that of Mr. Rutaihwa is on the contextual application of this requirement, and the understanding that what determines which part of the proceedings should be attached to an application is the circumstances of each particular case. This means that, in a fitting circumstance, a copy of a ruling and a drawn order may constitute the proceedings and serve the intended purpose without there being a need for attaching a copy of the recordings of what happens during the conduct of the matter. This position is not novel in our legal system.

In **Elizabeth Mpoki & 2 Others v. MAF Europe Dodoma**, Civil Application No. 436/1 of 2016 (unreported), this Court was confronted with a situation that is akin to the issue at stake in the second ground of objection. In that case, regularity of the revision proceedings was called into question on the ground that the applicants therein had not attached certified copies

of the impugned proceedings. Acceding to the position held by the applicants, we held as follows:

> *"..... we are constrained to agree with Mr. Turyamwesiga that those decisions must be applied in their own context. We are alive to the provisions of section 4 (3) of AJA which gives power to call for and examine the record of any proceedings before the High Court for the purposes of satisfying itself as to the correctness, legality or propriety of any finding, order or any decision made thereon and as to the legality of any proceedings of the High Court...."*

After restating the definition of proceedings which includes a judgment or an order, as contextualized in **SGS Societe General De Surveillance SA & Another v. VIP Engineering and Marketing Limited & Another**, Civil Application No. 25 of 2015 (unreported), the Court further reasoned:

> *"Viewed from that context, we are prepared to answer the issue posed above affirmatively. We have taken that view because we are satisfied that the peculiar circumstances of this application do not require the Court to examine the proceedings before the High Court in the narrow context of the term to enable us determine the application. Apparently, both learned*

advocates are in agreement that the rulings as part of the proceedings in its broad context are sufficient for the determination of the appiication before us because the error complained of is evident in the rulings whose copies are annexed to the founding affidavit. Accordingly, we are constrained to overrule the preliminary objection as we hereby do."

Nothing could be truer as far as the adequacy of the ruling of the High Court is concerned. We are in full agreement with Mr. Sanga that, in the circumstances of this case, all what constitutes the applicants' consternation against the decision of the High Court resides in the ruling of that court. In other words, determination of the revision proceedings in the instant matter would not be impeded or put to a halt merely because the proceedings, in the narrow context submitted by Mr. Rutaihwa, are not part of the record. We are confident that the same were not missed when we sat for determination of the plausibility or otherwise of the application. It is on the basis of the foregoing that we overrule this objection.

In sum, we find both of the objections barren of fruits and, accordingly, we overrule them and move on to determine the substance of the application.

In his submission in support of the application, Mr. Sanga argued that the 2nd applicant has suffered the adverse effect of the orders sought. He argued that the 2nd applicant was a necessary party without whom issues at stake would not be determined effectively. Joinder of the 2nd applicant would, in the learned counsel's view, avail her an opportunity to say a word or two on how the loss to be suffered would be irreparable to the operations of her activities. He submitted that the right to a fair hearing, as enshrined in provisions of Article 13 (6) of the Constitution of the United Republic of Tanzania, had been infracted. Mr. Sanga implored us to maintain the position we held in **M.B Business Limited v. Amos David Kasanda & 2 Others**, Civil Application No. 429/17 of 2019 (unreported).

Mr. Sanga further argued that the impugned ruling ordered maintenance of status quo ante while changes sought to be countermanded were effected on a much earlier date than 16th April 2020, stated in the ruling. He argued that to that extent the ruling is problematic, and that the quagmire on the extent to which the changes were made would be resolved through involvement of the 2nd applicant. In Mr. Sanga's view, the order had the effect of altering the status of the register without hearing the 2nd applicant. This rendered the ruling problematic, especially where the

substantive case was yet to be determined. He urged the Court to hold that the 2nd applicant's rights were trampled.

Mr. Rutaihwa began his onslaught by scathing the affidavit sworn in support of the application. He contended that it contained nothing that substantiates any interest that the applicants hold in the proceedings. The learned advocate was of the contention that the 2nd applicant was merely mentioned in the chamber summons and that no right could accrue from the mere mention. At best, he argued, the applicants would only be brought as witnesses in the case, at the instance of any of the parties, as the impugned order does not put the 2nd applicant in any blemished position.

With regards to the status of the orders, Mr. Rutaihwa contended that these were preservatory, wondering what would happen if whoever is aggrieved by the order demands to be heard. He urged the Court to desist from taking that route. Regarding the procedure through which the 1st applicant can join the proceedings, learned counsel argued that he can only join if there is sufficient explanation of the interest that he derives, and that none has been given in the instant case. Mr. Rutaihwa argued that what features as the applicants' interest in paragraph 20 of the affidavit is quite insufficient to justify their intended entry into the proceedings.

Responding to the contention that the applicants were kept oblivious to the court proceedings, Mr. Rutaihwa referred us to a letter dated 16th April, 2020. He conceded, however, that the proceedings in Misc. Commercial Application No. 62 of 2020 were commenced subsequent to the issuance of the said letter. He invoked the principle of estoppel, enshrined in section 123 of the Evidence Act, arguing that the applicants should be estopped from reneging on their undertaking to comply with any order that would be given by the court.

Mr. Mtobesya had nothing useful to submit on as the 4th and 5th respondents whom he represents supported the application.

In rejoinder, Mr. Sanga maintained that the applicants' interest arises where the 2nd applicant is cited and an order is issued against her, without notice. He was insistent that the letter that is found at page 88 of the record and that of 10th December, 2021, related to Misc. Commercial Cause No. 2 of 2020. Both of the letters, he argued, touched on the share transfer and not on injunction. Since what the Attorney general knew is different from what is at stake now, any intervention that did not address the application for restraint orders would be a wasted effort.

Regarding the contention that the order was merely preservatory, Mr. Sanga invited us to cast an eye on page 17 of the ruling in which it is indicated that the direction in item 3 of the drawn order was not prayed by any party yet it was granted by the court. He denied that there was a prayer for directives to the 2nd applicant.

With regards to irreparable loss, the view by Mr. Sanga is that public outcry is what brings out a loss. He argued that the reasoning in the case of **CRDB Bank PLC v. Symbion Power (T) Limited**, Civil Application No. 496/16 of 2022 (unreported) is of no relevance in this case, as intervention by the 1st applicant is done where a government entity is involved as a party. This is not the case here.

Resisting the attempt to invoke an estoppel, Mr. Sanga argued that the same is inapplicable in the circumstances of this case. He invited us to hold that the letter seen at page 88 of the record is a departure from the previous undertaking. He maintained that the order is problematic because the change against which any order for maintenance of status quo has been issued was done in 2019 though the reflection came in 2020. He took the view that the impugned order would not have been issued if the 2nd applicant

was accorded the right to be heard. He reiterated his call that the application be granted.

As we turn our attention to the application, it behooves us to begin our analysis by underscoring of what is otherwise an elementary rule in revisional proceedings to this Court. This is to the effect that powers exercised by the Court are vested in it by the provisions of section 4 (2) of the AJA in the course of hearing an appeal or section 4 (3) where a party moves the Court to do so as it were in this application. These powers are exercised where no right of appeal exists or where such right has been blocked by a judicial process (See: **Moses J, Mwakibete v. The Editor, Uhuru, Shirika la Magazeti ya Chama & Another** [1995] T.L.R. 134; and **Transport Equipment Limited v. Devram Valambhia** [1995] T.L.R. 161).

In the instant application, the loudest of the noises poured out by the applicants touch on what they contend that the 2nd applicant was not afforded the right to be heard when the High Court deliberated on and issued an order. That order compelled the 2nd applicant to effect an alteration in the company register. Mr. Rutaihwa does not dispute that the applicants were not impleaded in the proceedings. His conviction is that the decision to leave them out was justified as none of the orders sought from and granted

by High Court had any adverse bearing on the 2nd applicant. The 2nd applicant derived no interest from the proceedings.

Our review of the application and the orders that came out of the said application does not support the contention by the learned counsel. The learned advocate must be aware that court orders are not friendly letters that can be written and dispatched to any person of the applicant's liking. They are not pronouncements that can be made against strangers without they being invited to make a case for or against them, yet they carry that commanding influence which cannot be wished away. The application to the High Court and the orders that were issued therefrom cited the Registrar of Companies and ordered her to alter the register and restore the position that obtained before the order was issued. As a custodian of the information relating to statuses of companies, changes that alter the equation are matters of concern and the implication that go with that must be brought to the fore before a decision is made. It is this role that qualifies the 2nd applicant as an indispensable party, call her a necessary party, without whom court orders may not be effectual. This role fits squarely within the description that we gave in many of our previous decisions. They include **Julian Francis Mkwabi v. Laurent Chimwaga**, Civil Appeal No. 531 of

2020; **Tang Gas Distributors Ltd v. Mohamed Salim Said & 2 Others**, Civil Revision No. 68 of 2011; and **Abdullatif Mohamed Hamis v. Mehboob Yusuf Osman & Another**, Civil Revision No. 6 of 2017 (all unreported). We are constrained to hold that, in the context of the present case, the nature of reliefs sought by the respondents in the impugned proceedings had the potential of rendering the orders passed un-executable if, as it were, the 2nd applicant was overlooked.

Having satisfied ourselves that the issuance of the orders by the High Court was a one sided affair that excluded the applicants, our next point for determination is whether such indulgence was in order. We hasten to state that this was not in order. The principles of natural justice that we all cherish and subscribe to require, in one of its three pillars, that a person whose rights are affected by the decision to be taken by a judicial or quasi-judicial body must be afforded an opportunity to be heard. This principle, is known in Latin as *audi alteram partem*, protects against the arbitrary exercise of power by ensuring fair play. It literally means *"no one shall be condemned unheard"*.

In March, 2021, Ata Ur, a Pakistani scholar, published an article in a journal called Pakistan Lawyer. The title of the article is "**Principle of**

Natural Justice "Audi Alteram Partem ". He opined that this principle is not only of some importance but is of fundamental importance, anchored in the famous phrase that justice should not only be done, but also manifestly and undoubtedly seems to be done. This entails giving notice to the affected person and giving him a fair hearing. The principle breeds another maxim which is *qui aliquid statuerit parte inaudita altera, aequum licet dixerit, haud aequum facerit* (he who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right.)

So important is the principle that it has now become part of our constitutional foundation, as enshrined in Article 13 (6) (a) of the Constitution. This means that natural justice enjoys a more elevated status than merely becoming a common law principle. It is now an attribute of equality before the law (See: **Mbeya-Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma** [2003] T.L.R. 251). Any attempt to stifle the realization of this right has dire consequences, irrespective of whether the same verdict would be arrived had the party been accorded that right.

In **Bank of Tanzania v. Saidi A. Marinda & 30 Others & the Attorney General**, Civil Application No. 74 of 1998 (unreported), we underscored the importance of conformity with this principle and the consequence of failure to 'play by the rules'. We held:

> *"We are in agreement with Dr. Tenga's submission that failure to afford an opportunity to the applicant to be heard as a necessary party to the proceedings seriously affected the proceedings. This is so, because, it violates the basic fundamental principle of natural justice – Audi alteram partem. That is, before a decision affecting an individual is made such an individual shall be afforded an opportunity of being heard. The rationale behind this principle is not far to seek, that is, after hearing both parties involved, then on balance, upon consideration of both sides, a fair decision is made either way."*

See also: **Independent Power Tanzania Limited v. Standard Chartered Bank (Hong Kong) Limited**, Civil Revision No. 1 of 2009 [2009] TZCA 17 (9 April 2009; TANZLII).

Glancing through the proceedings that brought the instant matter, a different picture comes out. Doors were slammed on the 2nd applicant when the High Court entertained the prayers made by the 1st, 2nd and 3rd

respondents. Thus, while what the High Court eventually pronounced itself on may have been right, our considered view is that it ought to have done the right thing and, in this case, the right thing was to invite the applicants to the proceedings that culminated in the impugned decision. This was not done and there can be no worse form of disrespect of the constitutional right. At this juncture, we feel obliged to reiterate the position we took in the case of **National Housing Corporation v. Tanzania Shoe Company & Others** [1995] T.L.R. 251, in which we reasoned as follows:

> *"The trial was commenced and continued in the absence of the necessary party and in the absence of any direction by the trial Court to do so. Thus the court proceeded without authority and that constituted a major defect which went to the root of the trial. It rendered the proceedings null and void. In the event, the appeal succeeds. The proceedings before the High Court are declared null and void and are accordingly set aside."*

It is our finding and we hold that the proceedings in the High Court were shrouded in an illegality and we grant the application with costs. Accordingly, we set aside the proceedings and the orders emanating

therefrom. We direct that the respondents should, if they wish to pursue the orders, follow the law.

Order accordingly.

DATED at **DAR ES SALAAM** this 13th day of November, 2023.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

A. A. ISSA
JUSTICE OF APPEAL

M. K. ISMAIL
JUSTICE OF APPEAL

The ruling delivered this 14th day of November, 2023 in the presence of Ms. Grace Umoti, learned State Attorney for the Applicants, Mr. Theodore Primus, learned Counsel for the 1st, 2nd and 3rd respondents and Mr. Sisty Bernard, learned Counsel for 4th and 5th respondents, is hereby certified as a true copy of the original.

S. P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL