**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**THE DISTRICT REGISTRY OF MBEYA**

**AT MBEYA**

**MISC. CIVIL APPLICATION No. 02 OF 2020**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF MANDAMUS/PROHIBITION/CERTIORARY**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW AGAINST THE DECISION OF THE RESPONDENT TO DEFAULT TO AWARD TRANSCRIPT AND CERTIFICATE OF BANCHELOR OF LAWS TO THE APPLICANT UNREASONBLE AND BY VIOLATING PRINCPLES OF NATURAL JUSTICE**

**BETWEEN**

**SIBONIKE ANYINGISYE MWASALEMBA..... RESPONDENT**

**VERSUS**

**TEOFILO KISANJI UNIVERSITY (TEKU)..... RESPONDENT**

**RULING**

**03/09 & 25/11/2020.**

**UTAMWA, J.**

This is a ruling on what may be termed as cross-preliminary objections (or POs) raised by both the applicant in this matter, one Mr. SIBONIKE ANYINGISYE MWASALEMBA and the respondent, TEOFILO

KISANJI UNIVERSITY (TEKU). In this matter the applicant moved this court for leave to apply for judicial review against a decision of the respondent (the impugned decision). According to the chamber summons instituting this matter, the application is made under section 2 (1) and (3) of the Judicature and Application of Laws Act, "Cap. 35 R. E" and Rule 5 (1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. I believe, by wrongly citing "Cap. 35 R. E." the applicant had in mind Cap. 358 R. E. 2002 (Now R. E. 2019). The application is supported by a statement and an affidavit of the applicant as required by the law.

The wrong citation of the enabling provisions mentioned above however, is, under the contemporary law, not fatal to the application as long as this court has jurisdiction to entertain the matter. This stance is backed up by the principle of overriding objective that has been recently emphasized through the Written Laws (Miscellaneous Amendments Act) (No. 3) Act, No. 8 of 2018. The principle essentially requires courts to deal with cases justly, speedily, to have regard to substantive justice and avoid procedural technicalities. I thus, neglect the abnormality.

According to the statement and the affidavit, the applicant was a student of the respondent, a University which awards various degrees including bachelor of laws (LL.B). The applicant studied and completed LL.B at the respondent-University. However, the respondent made the impugned decision refusing to award him the degree. The purported reason for the refusal was that, the applicant had not completed a subject going by the name of Basic Computer Skills (TLW 115), hereinafter called

the subject at issue, though in fact, he had completed it. The applicant is now seeking leave to apply for judicial review against that impugned decision of the respondent.

The respondent objected the application through a counter affidavit sworn by her counsel, one Ms. Martha Gwalema, learned advocate. Along with the counter affidavit, the respondent lodged a preliminary objection (PO) vide the notice of PO and through the same learned counsel for the respondent. The same was based on the following two limbs:

i. That, the application is bad in law for non-joinder of the necessary party.
ii. That, the purported application is not maintainable for lacking proper affidavit.

On the other hand, the applicant objected the representation of the respondent by the learned counsel. The grounds for the objection were that, the representation will deny the applicant fair trial and is against professional ethics and advocates etiquettes.

The court opted thus, to consider the objections by both sides cumulatively and by way of written submissions. The parties accordingly filed their respective written submissions, hence this ruling. The applicant appeared without any legal representation while the respondent was represented by her counsel mentioned above.

Regarding his objection, the unrepresented applicant argued, though it was a bit difficult to understand his submissions, as follows; that, the

respondent's counsel is an employee of the respondent-University. She is among the lecturers who taught him some legal subjects. She did not however, teach him the subject at issue. The learned counsel drafted and filed the counter affidavit and the notice of PO for the respondent. Under such circumstances, the learned counsel cannot represent the respondent in this matter.

The applicant further contended that, according to what he referred to as "rule 36 (e) of the Rules of Professional Conduct Etiquette, and of the Tanganyika Law Society," an advocate cannot appear before any court or tribunal in any matter in which he believes that he may be required to give evidence as witness verbally or by declaration or by affidavit. He supported the contention by a case he cited as "**Ismail vs. Kamukamu (East African Law Report) 1986-1989 P1 165**" and "**registered trust this social action trust fund and others versus Happy Samsages Ltd and other, case No. 41 T. L. R. of 2000**." The applicant further argued that, in the matter at hand, the learned counsel, as one of the applicant's lecturers, cannot avoid giving evidence in court. However, if she will do so later, the applicant will fail to examine her and injustice will be occasioned. The learned counsel thus, has conflict of interests as a witness and as a counsel. He defined the term "*conflict of interests*" according to what he called the "black law dictionary" as "*a situation in which a person has a duty to more than one person or organization potentially adverse interest of both parties.*"

The applicant also submitted that, the rule against bias guides that, a person cannot be a judge in his own case. Officers of the court like

advocates must also observe this rule. The representation thus, will impair the applicant's right to fair trial/hearing which is enshrined under article 13 (6) (1) of the Constitution of the United Republic of Tanzania (Cap. 2 R. E. 2002), henceforth the Constitution. He also urged this court to invalidate all the documents prepared by the learned counsel for the respondent for being illegal due to the reasons shown above.

In her replying submissions to the objection raised by the applicant, the learned counsel for the respondent did not dispute most of the facts in the applicant's submissions. She however, contended that, her appearance on behalf of the respondent does not defeat justice on the following grounds; that, though she was the applicant's lecturer in legal subjects, she did not lecture him on the subject at issue. She cannot thus, be compelled in any way to be a witness in the dispute between the applicant and the respondent. Owing to these reasons, it cannot be said that she is facing a conflict of interests. The learned counsel further distinguished the precedents and other references cited by the applicant for the above reasons. She thus, urged this court to overrule the objection raised by the applicant against her.

In his rejoinder submissions, the applicant basically reiterated the contents of his submissions in chief.

Regarding the PO by the respondent, the learned counsel for the respondent submitted on the first limb of the PO thus; the respondent-University does not have any capacity to sue or to be sued on its own capacity/name. This is because, it was established under its Registered

Trustees. This is evident under article 8 (1) and (2) of the second schedule to the Teofilo Kisanji Charter and Rules, 2010, (the Charter). The said Charter was annexed to the submissions by the counsel. She further argued that, according to paragraph 4 of the Teofilo Kisanji University Trust Deed (the Trust Deed) which is made under article 8 of the Charter, the respondent-University is property of the Registered Trustees of the Teofilo Kisanji University, which is a body incorporated and registered under the Trustees Incorporation Ordinance, Cap. 375.

The learned counsel thus, contended that, the applicant ought to have joined the Registered Trustees as the necessary party. Otherwise, the order that will be passed by this court will not be executable. She further argued that, the law guides that, without impleading the necessary party in court proceedings, the court cannot pass an effective decree. She supported this contention by a decision of the Court of Appeal of Tanzania (CAT) in the case of **Abdulatif Mohamed Hamis v. Mehboob Yusuf Osman and Fatma Mohamed, Civil Revision No. 6 of 2017, CAT at Dar es Salaam** (unreported).

On the second limb of the PO, the learned counsel for the respondent contended that, the application is supported by a defective affidavit which contains hearsay at paragraph 9. The said paragraph of the affidavit contains allegedly threatening words uttered by one Joshua Malekela. However, the said Joshua Malekela did not swear any affidavit. This was contrary to Order XIX rule 3 (1) (2) of the Civil Procedure Act, Cap. 33 R. E. 2002 (Now R. E. 2019), hereinafter called the CPA. The law also guides that, a court of law should not act on an affidavit with unspecified sources

of information. She cement this stance of the law by citing the case of **Standard Goods Corporation Limited v. Harackchard Nathar and Co. [1950] EACA 99** and that of **Salima Vuai Foum v. Registered Cooperative Societies and others [1995] TLR. 75.**

Lastly, the learned counsel for the respondent submitted that, for the reasons shown above, the application at hand is not maintainable.

In his replying submissions regarding the first limb of the respondent's PO, the applicant argued in essence that, the respondent-University is a registered legal entity. This is by virtue of articles 3 (6) and 8 (2) of the Charter and according to the Trust Deed. These instruments provide that, the respondent is independent, self-governing, self-financing and self-accounting institution with its financial and administrative controls. He thus, contended that, it was proper to institute this application against the respondent alone, without impleading the Registered Trustees.

As to the second limb of the PO, the applicant replied to the following effect; that, this is an application for leave to commence a judicial review. The process of Judicial Review is a right of the applicant under Article 30 (3) of Constitution. This court is thus, enjoined to do justice to parties. It cannot consider minor procedural technicalities in the applicant's affidavit.

I have considered the arguments by both sides, the record and the law. In my adjudication plan therefore, I will firstly consider the issue on the respondent's representation. In case I will overrule the concern raised by the applicant under this heading, I will proceed to consider the PO raised by the respondent. Nonetheless, if I will uphold the objection raised

by the applicant, I will make necessary orders according to law. This plan is based on the fact that, an issue of parties' representation in a matter before a court is vital. It is also an important principle in the process of administration of justice that, courts should resolve issues related to legal representation before deciding on matters pending before them. In the case of **Mechmar Corporation (Malaysia) Berhad (In Liquidation) vs. VIP Engineering & Marketing Limited and 3 others, Civil Application No. 190 of 2013, CAT at Dar es Salaam** (unreported ruling dated 16th May, 2019) for example, the High Court had decided a matter before it while there was a pending issue on which advocate, between two was the rightful counsel for the applicant. The CAT in that **Mechmar case** (supra) held that, since the High Court had failed to resolve the issue of representation prior to the determination of the matter before it, the affected party was entitled to pursue a revision before it (the CAT). In making this finding, the CAT envisaged that, an issue of representation was crucial since it went to the root of the party's right to be heard. It is therefore, incumbent in the matter at hand to resolve the objection raised by the applicant, before I resolve any other issue.

Now, regarding the objection raised by the applicant the important issue for determination is *whether under the circumstances of the matter at hand, it is legally improper for the learned counsel (Martha Gwalema) to represent the respondent*. According to the arguments by the parties, it is not disputed that, the learned counsel is an employee of the respondent-University as a lecturer in legal subjects. She, in fact, taught the applicant some legal subjects. However, she did not teach him the subject at issue.

In my view therefore, the circumstances of the case do not favour the contention by the applicant that it is not permissible for the learned counsel to represent the respondent in the matter at hand. Indeed, the applicant's reasons for such belief are not tenable on the following grounds; in the first place, under the circumstances of the case, it cannot be said that the learned counsel is facing a conflict of interests legally so called. Actually, the state of affairs do not even fit in the definition of the phrase "conflict of interests" offered by applicant himself herein above, i. e. "*a situation in which a person has a duty to more than one person or organization potentially adverse interest of both parties.*" Indeed, the applicant did not properly cite the dictionary upon which he based this definition. He merely named it as the "black law dictionary" without any further reference. This is not a proper way of assisting courts of law. Nonetheless, my perusal to The Black's Law Dictionary, 9th Edition, West Publishing Company, St. Paul, 2009, at page 341, revealed that, the meaning of "conflict of interest" regarding representations of persons by counsel is this:

> "...A real or seeming incompatibility between the interests of two of a lawyer's clients, such that the lawyer is disqualified from representing both clients if the dual representation adversely affects either client or if the clients do not consent."

It follows thus that, to allege that a counsel is facing a conflict of interest, one must show that he or she is trying to represent two sides of his clients with adverse interests to each other. In the matter at hand however, neither the record nor the arguments by the applicant himself suggest that the learned counsel under discussion is trying to represent two clients with

adverse interests to each other. It cannot thus, be said that the learned counsel, Ms. Martha Gwalema, is facing conflict of interests in representing the respondent. The argument by the applicant in this regard was thus, founded on a serious misconception of the law.

Furthermore, the applicant's averment that the representation by the counsel is against her professional etiquettes is not tenable. He supported this contention by the so called rule 36 (e) of what he termed as "the Rules of Professional Conduct Etiquette, and of the Tanganyika Law Society." Again, I could not trace this rule for this unknown citation to our practice. I presumed that the applicant had in mind the Advocates (Professional Conduct and Etiquettes) Regulations, 2018, GN. No. 118 of 2018, hereinafter called the GN. I did so because, this is the most relevant legal instrument to the odd citation offered by the applicant. The apparent most pertinent provisions of law to the applicant's contentions are those of regulation 96 (1) and (2) of the GN. These provisions read thus; and I quote them for a readymade reference:

> "**96; Advocate as a Witness:**
>
> (1) An advocate who appears in a proceeding, and every partner, associate or employee of that advocate in the practice of law has a duty not to submit an affidavit or testify in the proceeding, except as permitted by law or practice or as to purely formal or uncontroverted matters.
>
> (2) An advocate shall not undertake a matter when it is probable that the advocate or a partner or associate of the advocate will be required to give evidence:
>
> Provided that if the engagement is accepted and the improbable occurs, the advocate has a duty to withdraw and the matter should be entrusted to an advocate outside of the original advocate's firm."

According to the provisions of the GN quoted above, it is lucid that, the rule prohibiting an advocate to appear in a proceeding as counsel and a witness by testifying or submitting an affidavit at the same time, exists, yes. This one is seemingly a trite rule that was emphasised by courts of this land years ago. In the case of **Jafferali and another v. Borrisaw and another [1970] HCD. n. 324** (decided in 1970s) for example, this court (Bramble J, as he then was) held that, an advocate cannot appear as a counsel and a witness in the same mater he/she is representing a client.

Nevertheless, according to the provisions of the GN quoted above, this principle is not absolute. It is flexible in the sense that, can advocate can be both, a witness and a counsel in some circumstances. This is especially, where he is permitted by law or practice or is acting so in purely formal or uncontroverted matters. The provisions quoted above also guide that, where a counsel takes up an engagement, and he or she is later on necessitated to appear as a witness in the same matter, he/she will have the duty to withdraw and handle the conduct of the matter to an advocate outside his firm.

In my settled view therefore, even if it is presumed (without deciding) that it is unavoidable for the learned counsel to be called as a witness as contended by the applicant, that alone will not necessarily bar her from representing the respondent in the matter at hand. In fact, the learned counsel is disputing that she will be called as a witness in this matter or any other matter later because she did not teach the applicant the subject at issue. I actually, agree with her since the fact that she did not teach the applicant the subject at issue is not disputed by the parties.

However, if that situation occurs, then the proviso to Regulation 96 (2) of the GN reproduced earlier will apply. This means that, if the counsel will be obliged to give evidence, she will have to withdraw her representation and another advocate outside her firm will be handled the conduct of the matter. There are thus, effective legal safeguards taking care of the applicant's concern.

In fact, even in the **Jafferali case** (supra) in which the court accepted that a person cannot pose as both a counsel and a witness at the same time in the same matter, the court held that, it could not make an order precluding the respondent from acting as an advocate for defendants. This was because, it was premature for the applicant to object such representation before the respondent was actually called as a witness in the matter. The court further held that, if any positive action could be taken which would violate the rule, the court could then make the necessary orders. The same way, in the matter at hand, the applicant cannot make the objection under discussion at this stage when the learned counsel has not been called as a witness yet.

The applicant further complained against the learned counsel's act of swearing a counter affidavit for the respondent in the application at hand. This complaint is also lame for the same reason that the rule quoted above is flexible. The learned counsel can act the way she is doing as long as the law or practice permits her to do so as guided under Regulation 96 (1) of the GN quoted previously. It must also be noted by the parties that, our law and practice does not bar an advocate from swearing an affidavit on

behalf of his client in a matter he/she is representing the client. He/she can do so as long as he/she depones facts which are in his/her own knowledge; see the guidance by the CAT in the case of **Lalago Cotton Ginnery and Oil Mills Company Ltd, v. The Loans and Advances Realization Trust (LART), Civil Application No. 80 of 2002, CAT, at Mwanza** (unreported). The requirement for one to swear an affidavit for use in court on matters in his own knowledge is also underscored under Order XIX (3) (1) of the CPA. The guidance made by the CAT in the **Lalago case** (supra) was also underlined by this court (Korosso, J. as she then was) in the case of **Athanas Sebastian Kapunga and 7 others v. Republic, Economic Cause No. 7 of 2017, High Curt of Tanzania (HCT), at Mbeya** (unreported).

In the matter at hand, the learned counsel indicated clearly in the verification clause of her counter affidavit that, all the facts therein are true to the best of her own knowledge. It is also common ground that, a counter affidavit like the one under discussion is also an affidavit like any other affidavit. The principles applying in affidavits thus, apply *mutatis mutandis* to counter affidavits. The learned counsel's counter affidavit is thus, saved by the principle underscored in the **Lalago case** (supra) and the **Athanas case** (supra).

Furthermore, the applicant's complaint that the representation by the learned counsel will defeat justice and deny him fair trial which is enshrined under Article 13 (6) of the Constitution, cannot be considered as genuine. This is because, he did not explain as to how he will be affected amid the safeguards set by the law under the provisions of Regulation 96

of the GN quoted above. The precedents cited earlier like the **Lalago case**, the **Jafferali case** and the **Athanas** Case also vindicate the representation of the respondent by the learned counsel.

Moreover, the applicant's contention that the rule that a person cannot be a judge in his own case applies also to advocates, is not supported by any law. In my view, this is another misconception of the law on the part of the applicant. The rule against bias is, in law, among the requirement of the principles of natural justice. This rule is usually expressed in a Latin maxim of *Nemo judex in causa sua or nemo judex in sua causa.* This rule applies to adjudicators who make decisions in determining parties' rights. My brother Kahyoza, J. well expounded it in the case of **E. 933 CPL. Philimatus Fredrick v. Inspector General of Police and the Attorney General, Misc. Civil Cause No. 03 of 2019, HCT, at Musoma** (unreported), and I quote him for a quick reference:

> "The principle *Nemo judex in cause sua* or at times referred to as *Nemo judex in sua cause* or *Nemo debet erser judex in propria cause sua, quia non potest case judex et pars,* simply means no one can be a judge of his own cause. It means also nobody is to be a judge in his own cause, because he cannot be (simultaneously) judge and party. This principle guards against bias, in a sense that no one shall examine his own case as a judge or give judgment for himself or that nobody can be simultaneously suitor and judge. One would simply say that a person cannot be a judge in a case in which he has an interest."

It cannot thus, be accepted that the rule against bias is also applicable to counsel as erroneously contended by the applicant. That will amount to extending the rule beyond its elasticity. This is because, advocates only represent their clients in judicial proceedings. They do not make any decision. They only advice courts on what they think is the law through

there mere submissions. Their submissions are neither verdicts no evidence. If advocates swear affidavits on behalf of their clients for the use in court proceedings as it was in the matter under consideration, such affidavits are not taken as decisions, but as mere evidence like any other evidence given by any other party to court proceedings. I thus, disregard the contention by the applicant that the learned counsel under discussion is bound by the rule just discussed above.

Lastly, I feel obliged to make some brief remarks on the significance of the parties' right to legal representation in judicial proceedings. I also did so in the case of **The Director of Public Prosecution v. Godgift s/o Slaa and 4 Others, Criminal Appeal No. 149 of 2019, HCT, at Mbeya** (unreported ruling dated 12/06/2020). Firstly, the right to legal representation, which applies to both civil and criminal proceedings, is fundamental, part of human rights and guaranteed by Article 13 (6) (a) of the Constitution under the umbrella of the right to fair trial or fair hearing. This view was also emphasized by this court in the cases of **Richard Kasela v. The Chairman of the Teachers Service Commission (TSC) and 2 others, Misc. Civil Application No. 15 of 2001, High Court of Tanzania (HCT), at Mbeya** (unreported, by Mrema, J. as he then was) and **Rahel Kifyogo v. Kanjinga Mwashilindi, (PC) Civil Appeal No. 56 of 1997, HCT, at Mbeya** (unreported, by Moshi, J. as he then was). In the case of **Thomas Mjengi v. Republic [1992] TLR 157** (Mwalusanya, J, as he then was), it was also held that, the right to legal representation is not only constitutional, but is also statutory.

In fact, the right to legal representation extends to the right of choice for a lawyer by a party to the proceedings. It follows thus that, a court's decision reached through an unreasonable denial of a party's right to legal representation of his choice, is liable to be quashed on appeal; see the **Rahel case** (supra).

Owing to the prominence of the right to legal representation in the process of adjudication just highlighted above, no court of law is entitled to deny that right to any party for unfounded grounds like the ones advanced by the applicant in the matter at hand. It must also be born in mind that, this court is a court of records. It make case law where its precedents are not reversed by the CAT by virtue of the doctrines of *stare decisis*. I am not therefore, prepared to see it going into records of this court that I presided over proceedings of the above mentioned nature of impeding the right to legal representation.

I also wish to remark on the precedents cited by the applicant. Following the odd citations offered by him. Indeed, I could not trace them for the mal-citation. However, owing to the reasons shown above and the precedents I have cited, I am convinced that, the applicant's concern is weightless.

Due to the findings I have made above, I answer the issue regarding the objection raised by the applicant negatively that, under the circumstances of the matter at hand, it is **not** legally improper for the learned counsel (Martha Gwalema) to represent the respondent in the

matter at hand. This finding opens the door for considering the PO raised by the respondent's counsel against the application at hand.

The major issue regarding the PO raised by the respondent's counsel is whether or not the application at hand is incompetent for the reasons advanced by her. There are two sub issues to be considered since the respondent paraded two limbs of the PO. The two sub-issues are these:

i. Whether or not the respondent can be sued on her own name/capacity.
ii. Whether or not the affidavit supporting this application is improper in law.

Regarding the first issue, I am of the settled opinion that, the circumstances of the matter attracts answering this issue positively on the following grounds; in the first place, from his submissions, the applicant does not seriously dispute the fact that the respondent-University is property of the Registered Trustee. He however, argues that, she is independent, self-governing, self-financing and self-accounting institution with its financial and administrative controls. This is vide the Charter and the Trust Deed.

In my view, it is the law that, parties to court proceedings must be either natural persons or legal persons and not otherwise; see the case of **The Registered Trustees of the Catholic Diocese of Arusha vs. The Board of Trustees of Simanjiro Pastoral Education Trust, Civil Case No. 3 of 1998, HCT, at Arusha** (unreported). It is my further opinion that, an institution or a named group of persons are obviously not natural persons. They can however, obtain legal personality through the operation

of law. This includes being so declared or registered through various legislation like the Companies Act, Cap. 212, the Trustees' Incorporation Act, Cap. 318 etc. This particular view is supported by the definition of the phrase "legal personality" as described by The Black's Law Dictionary (supra) at page 1259. The same means, and I quote the meaning for a quick reference:

> "...The legal status of one regarded by the law as a person; the legal conception by which the law regards a human being or an artificial entity as a person... refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities."

It follows thus, that, an institution or entity cannot obtain legal personality merely because some internal arrangements, declare it self-propelling as the applicant wanted to envisage. The rules in the Charter and the Trust Deed discussed above were thus, mere internal arrangements which do not amount to any law that may vest in the respondent any legal personality. Being self-propelling or being independent, self-governing, self-financing and self-accounting institution with own financial and administrative controls alone, does not therefore, necessarily mean that an institution has a legal personality. That legal personality must be recognised by the law.

It is therefore the law that, only natural or legal persons can sue or be sued in their own names/capacities. If an institution or an entity or unit is self-propelling, but not so recognised by law, it cannot sue or be sued by its own name.

In the case at hand, the applicant merely stated in his affidavit and statement that the respondent can sue or be sued by the name of **Teofilo Kisanji University of Mbeya**. He did not however, state in such

instruments as to how such an unnatural person (institution) obtained its legal personality. This is because, he did not state which law makes the respondent a legal person. Besides, the applicant himself is contradictory in his averments. In the affidavit and statement he indicated that, the respondent can be sued as shown above (i. e. as **Teofilo Kisanji University of Mbeya**). However, he impleaded the same respondent in the matter at hand as **Teofilo Kisanji University (TEKU)**. He omitted the words "of Mbeya" and substituted them with the word "(TEKU)." The applicant did not offer any explanations for this discrepancy. This is a sign that he is not even sure of whether or not the respondent is a legal person, and if so, under which exact name she is so recognised by the law.

Our practice is clear that, when one institutes court proceedings against an artificial person with legal personality, he discloses the law under which such legal personality is recognised. This is commonly shown in the documents instituting the proceedings in court. This is for purposes of satisfying the court that, the person against whom the proceedings are brought, real exists before the eyes of the law and an executable order can be issued against him. The applicant in the matter at hand did not do so in his application. It does not thus, suffice to merely state in the document instituting court proceedings that, the respondent or defendant can sue or be sued by his/her own name without disclosing the law which vests legal personality to him/her as the applicant did in the matter under consideration. It is more so where that fact is disputed by the respondent himself as it was in the matter at hand.

Owing to the reasons show above, I find it dangerous to proceed with this matter for fear that, at the end of the day the court may make orders that cannot be executed. I thus, agree with the learned counsel for the respondent that, the respondent cannot be sued by its own name without joining the Registered Trustees. Actually, the Registered Trustees alone, can be impleaded even without the respondent. I thus, answer the issue regarding first limb of the respondent's PO affirmatively that, the application at hand is indeed, incurably incompetent. This finding makes it unnecessary to consider the second limb of the PO since it suffices to dispose of the entire matter.

Owing to the reasons shown above, I make the following orders; I find the application incompetent and I strike it out. However, though in law costs follows event, I order each party to bear is own costs. This is due to the nature of this matter, being application for leave to file a judicial review. In law, an application of this nature could even be heard *ex-parte; see* the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. However, the respondent opted to also be heard. It is so ordered.

THE HIGH COURT OF TANZANIA

JHK. UTAMWA

JUDGE

25/11/2020

25/11/2020.
CORAM; J. H. K. Utamwa, Judge.
Appellant: present in person.
Respondent: Ms. Martha Gwalema, advocate.
BC; Mr. Patrick, RMA.

Court: Ruling delivered in the presence of the applicant and Ms. Martha Gwalema, learned counsel for the respondent, in court this 25th November, 2020.

J. H. K. UTAMWA
JUDGE
25/11/2020.