

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**(CORAM: MWANGESI, J.A., KWARIKO, J.A. And KEREFU, J.A.)**

**CIVIL APPLICATION NO. 432/17 OF 2017**

**ATTORNEY GENERAL ..... APPLICANT/INTERESTED PARTY**

**VERSUS**

<b>1. NATIONAL HOUSING CORPORATION 2. LARS ERIC HULSTROM 3. MANYONI AUCTIONEERS 4. JING LANG LI</b>	}	<b>..... RESPONDENTS</b>
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(Application to be joined as an interested party in Civil Application No. 432/17 of 2017 in respect of the Decision of the High Court of Tanzania at Dar es Salaam)

**(Ngwala, J)**

dated the 27<sup>th</sup> day of April, 2012  
in  
**Land Case No. 129 of 2006**

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**ORDER**

**RULING OF THE COURT**

29<sup>th</sup> October & 14<sup>th</sup> November, 2019

**KEREFU, J.A.:**

The applicant herein has lodged a Notice of Motion seeking to be joined in the proceedings in Misc. Application No. 432/17 of 2017 and the intended appeal (the Notice), as an interested party. The Notice of Motion is lodged under sections 6 (a), 8 (1) (f), 17 (1) (a) (2) (a) and (b) of the Office of the Attorney General (Discharge of Duties) Act, 2005 (the AG's

Act) and Rule 4 (2) (b) of the Court of Appeal Rules, 2009 (the Rules). The application is supported by an affidavit duly deposed by one Gabriel Pascal Malata, the then Assistant Director and Principal State Attorney, who is now, the Deputy Solicitor General in the office of the applicant.

On the other hand, the fourth respondent has filed an affidavit in reply strongly opposing the application, while the first, second and third respondents have opted not to file reply affidavits.

In the Notice of Motion, the applicant has advanced the following grounds, that:-

- 1) The Attorney General became aware of the Civil Application No. 432/17 of 2017 between the National Housing Corporation, Lars Eric Hulstrom and Manyoni Auctioneers (applicants) and Jing Lang Li (respondent) where the applicants are praying for extension of time within which to appeal to this Court out of time against the judgement of the High Court of Tanzania, Land Division in Land Case No. 129 of 2006 (Ngwala, J) dated 27<sup>th</sup> April, 2012. The said application is a second bite*

*after the first application was denied by the Land Court (Mzuna, J) in Civil Application No. 454 of 2017;*

*2) The Attorney General has carefully gone through the judgement and several applications related to this matter and observed that:-*

- (i) The National Housing Corporation, the judgement debtor, is government sole owned entity established by the National Housing Corporation Act, Cap. 295 R.E. 2002 mandated to execute specific Government policy;*
- (ii) That, the decree holder was a tenant of the National Housing Corporation which tenancy ended in 2006;*
- (iii) That, during the pendency of the tenancy agreement there was breach of tenancy agreement which led to eviction of the decree holder;*
- (iv) That, dissatisfied thereof, the respondent instituted Land Case No. 129 of 2006 at the High Court Land Division which was determined in favour of the respondent in 2012 where the court granted the following reliefs;*

- (a) *payment of special damages at the tune of TZS 25,000,000/= and US\$ 177, 450;*
- (b) *general damages TZS 25,000,000/=;*
- (c) *punitive damages TZS 20,000,000/=;*
- (d) *vacant possession of the rented house;*
- (e) *plaintiff be restored into the suit premises forthwith.*

*3) Dissatisfied, the National Housing Corporation attempted twice to appeal to the Court of Appeal. However, the appeal was struck out twice on technical grounds;*

*4) The National Housing Corporation preferred an application for extension of time before the High Court of Tanzania and Honourable Mzuna J, determined and dismissed the application for want of good cause hence application No. 432 of 2017 before this Honourable Court as second bite application;*

*5) The respondent has lodged execution proceedings in the High Court, vide Execution No. 32 of 2017 applied for:-*

- (a) eviction and restoration of decree holder in the apartment No. 103 in Plot No. 3, 5, 7 and 9 along Haile Selassie Road Oysterbay;*
- (b) attachment of money belonging to National Housing Corporation held in Account No. 011103002728 at NBC;*
- and*
- (c) attachment and sale of the building which belongs to the National Housing Corporation used as headquarters office situated at plot No. 1 Ufukweni Road/Ally Hassan Mwinyi Avenue in Dar es Salaam.*
- 6) That, the properties which are subject to attachment in the execution of the court's orders are Government properties of which if executed shall cause irreparable loss and hardship to the public entity and Government as a whole;*
- 7) That, the Attorney General has noted many areas of illegalities in the impugned judgement, which he intends to pursue in this Court, hence he prays to be allowed to join in the Civil Application No. 432/17 of 2017 and other*

*applications connected to Land Case No. 129 of 2006  
including the intended appeal as an interested party;*

- 8) That, justice can only be seen to be done if the Attorney General will be afforded right to be heard on behalf of the President and public as a whole in terms of Article 35 of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time.*

For a better understanding of the matter before us, we find it indispensable, at the outset, to go into the background of the matter, albeit briefly. According to the record of the application, the fourth respondent was the former tenant of the first respondent, under a lease agreement entered between the first and fourth respondents dated 6<sup>th</sup> January, 2003 in respect of the Apartment 103 situated at Plots No. 3, 5, 7 and 9 along Haile Selassie Road, Oysterbay in Kinondoni, Dar es Salaam (the suit premises). Prior to the expiry of the said agreement, the first respondent with the assistance and supervision of the third respondent terminated the said agreement and evicted the fourth respondent from the suit premises. Aggrieved, the fourth respondent instituted the Land Case No. 129 of 2006 at the High Court suing the first, second and third respondents for unlawful

eviction. After full trial the trial court entered judgement in favour of the fourth respondent and awarded her the following reliefs:-

- (a) payment of special damages TZS 25, 000,000/= and US\$ 177, 450;*
- (b) payment of general damages TZS 25,000,000/=;*
- (c) payment of punitive damages TZS 20,000,000/=;*
- (d) payment of the interest on the decretal amount at the court's rate of 7% per annum;*
- (e) vacant possession of the suit premises;*
- (f) that, the 4<sup>th</sup> respondent be restored into the suit premises forthwith; and*
- (g) the costs of the case.*

Aggrieved by that judgement, the first, second and third respondents unsuccessfully attempted to appeal to this Court twice. Still determined, they have lodged the Civil Application No. 432/17 of 2017 praying for extension of time to lodge the intended appeal out of time. The applicant, after being made aware of the said application and the intended appeal, he lodged the Notice of Motion to be joined as an interested party therein.

At the hearing of the application, the applicant was represented by Mr. Gabriel Pascal Malata and Ms. Mercy Kyamba, both learned Principal

State Attorneys, assisted by Ms. Joyce Yonaz and Ms. Lightness Msuya, also learned State Attorneys, whereas the first respondent was represented by Mr. Aloyce Sekule, the second respondent by Mr. Charles Luoga, the third respondent by Mr. Alex Mushumbuzi and the fourth respondent by Dr. Rugemeleza A. K. Nshala, all learned counsel, respectively. It is noteworthy that no written submissions were filed by the parties and they, thus addressed the Court under Rule 106 (10) (b) of the Rules as amended by GN. No. 344 of 2019.

Mr. Malata started his submissions by fully adopting the Notice of Motion and the supporting affidavit filed in Court on 10<sup>th</sup> October, 2017 to form part of his oral submission. He then clarified that, the applicant being the chief legal guardian and custodian of the Government/public properties noted the need to be joined in the proceedings in Civil Application No. 432/17 of 2017 and the intended appeal to protect public interests and the Government's/public properties, which are subject of execution proceedings in Execution No. 42 of 2017 arising from the Land Case No. 129 of 2006. He said, in that execution proceedings, the fourth respondent, among others, has prayed for attachment of money belonging to the first respondent held under Account No. 011103002728 at the NBC, attachment



and sale of the first respondent's headquarters office situated at Plot No. 1 Ufukweni Road/Ally Hassan Mwinyi Avenue in Dar es Salaam and eviction of the second respondent, who is a tenant of the first respondent in the suit premises.

Mr. Malata further argued that, pursuant to section 16 (3) of the Government Proceedings Act, No. 5 R.E. 2002, Government properties are immune from attachment orders by courts and tribunals. He also cited sections 6 (a) and 17 (1) of the AG's Act and argued that in terms of those provisions the applicant is empowered to appear at any stage of any proceedings before any court or tribunal, where he was excluded to protect Government/public interests. To bolster his position he cited the decision of this Court in **Consolidated Holding Corporation v. African Terminals Limited and 3 Others**, Civil Application No. 144 of 2012 (unreported), where the Court considered a similar situation and invoked sections 6 (a) and 17 (1) (a) of the AG's Act and granted the application by allowing the applicant to be joined in that application as an interested party.

He then submitted that, what is required in applications of this nature is for the applicant to establish the said interests, public properties involved and reasons to be joined, as a party in the matter. It was

therefore the contention of Mr. Malata that, since the Notice of Motion, the supporting affidavit and the oral submission have clearly complied with that condition, the application deserves to be granted. He as such, urged us to be guided by our previous decision in **Consolidated Holding Corporation** (supra) and **The Attorney General v. Tanzania Ports Authority and Mr. Alex Msama Mwita**, Civil Application No. 87 of 2016 (unreported) and grant the application.

In response, Mr. Sekule supported the submission made by Mr. Malata and in addition, he referred us to sections 2 (a), 3 and 5 (2) of the National Housing Corporation Act Cap. 295 R.E. 2002 (the NHC's Act) to justify that, the first respondent is a public corporation. He further referred us to the 1<sup>st</sup> Schedule to the NHC's Act and argued that, to prove that the first respondent is a public corporation, the Chairperson of her Board is appointed by the President and other Members to the Board are appointed by the Minister. In the same line of argument, Mr. Sekule argued that, the properties of the first respondent, be it buildings, money or accounts are all under the total control of the Government and governed by section 16 of the Government Proceedings Act. He supported his stance by referring us to the authority cited by Mr. Malata in **The Attorney General v.**

**Tanzania Ports Authority and Mr. Alex Msama Mwita**, (supra) at pages 7 - 9 and equally prayed for the application to be granted. It is noteworthy that, Mr. Luoga and Mr. Mushumbuzi also supported the submissions by Mr. Malata without more.

In his response, Dr. Nshala vehemently opposed the application and disputed the submissions made by Mr. Malata that what he argued before the Court, is in relation to the Execution No. 42 of 2017 and has nothing to do with Civil Application No. 432/17 of 2017. He specifically referred us to paragraph 16 of the supporting affidavit and argued that, all illegalities pointed out in that paragraph are in relation with Execution No. 42 of 2017 and not the Civil Application No. 432/17 of 2017 which the applicant intends to be joined as an interested party.

Dr. Nshala further challenged the affidavit in support of the Notice of Motion that, it contains untruth information that the ruling of the High Court in Execution No. 42 of 2017 has issued orders for attachment of the disputed premises, the first respondent's headquarters and the account. He spiritedly argued that, the said ruling has never issued such orders and he said, what Mr. Malata did was only to mislead this Court and his submission should be disregarded. Dr. Nshala clarified that, what the High Court did in

the said execution was to issue the eviction order directing the third respondent to evict the second respondent from the suit premises. It was therefore, the view of Dr. Nshala that, since the second respondent is neither a public entity nor a Government property, there is no any Government/public interest involved to justify the applicant's application. It was the further view of Dr. Nshala that, the applicant's application is only a delaying tactics to deny the fourth respondent the right to enjoy the fruits of the decree.

Dr. Nshala further argued that, in his Notice of Motion and supporting affidavit, the applicant has not indicated as to when he became aware of the matter to enable the Court to determine, if he had acted promptly and diligently. He referred us to paragraph 17 of the supporting affidavit and argued that, the applicant has alleged that, the judgement of the trial court is tainted with illegalities, but has completely failed to demonstrate the said illegalities in the impugned judgment, as required by the law. He said, even the reasons as to why he should be joined to the matter, has not been stated. To buttress his position he cited the case of **Hanspaul Automechs Limited v. RSA Limited**, Civil Application No. 126/02 of 2018 (unreported) at page 9.

Dr. Nshala further referred us to the current restructuring of the Attorney General's Office via the Office of the Attorney General (Restructure) Order, 2018 GN. No. 48 of 2018 (the Restructuring Order) and argued that, in terms of that Restructuring Order all lawyers/advocates working in public offices are state attorneys. He as such, argued that, since Mr. Sekule who is currently representing the first respondent is now a State Attorney in terms of that Restructuring Order, he can as well protect the alleged Government/public interests in this matter and there is no need to join the applicant as a party in the application.

Dr. Nshala emphasized that, since the first respondent is a commercial business entity and her relationship with the fourth respondent is that of the landlord and the tenant, the applicant should not be allowed to join, as he is not a party to the lease agreement entered between the first and fourth respondents. He further argued that, the first respondent had since indicated that, she has wherewithal and assets to meet the court's decree. As such, Dr. Nshala prayed the Court to note that, the matter is long overdue and the fourth respondent, who is 73 years old woman, has been in courts' corridor since 2006 pursuing her rights, but in vain. He further urged the Court to note that, joining the applicant in the

application will further delay and complicate the same. He finally insisted for the application to be dismissed for lack of merit.

In rejoinder submission, Mr. Malata challenged the submission by Dr. Nshala that, the same is out of context, because in terms of section 17(1) of the AG's Act, what is required to be established at this stage is only the existence of public interest and the public property involved in the matter. He said, the claim by Dr. Nshala that the applicant has failed to demonstrate the illegalities and/or indicate when exactly he became aware with the matter, is irrelevant and misconceived.

Mr. Malata further challenged the submission by Dr. Nshala claiming that, the applicant's concern is only in relation to the execution proceedings. Mr. Malata clarified that, the Notice of Motion and the supporting affidavit are all very clear that the applicant is applying to be joined, as an interested party, in the Civil Application No. 432/17 of 2017 and all other matters connected to Land Case No. 129 of 2006 including an intended appeal. On the issue of restructuring the applicant's office, though, Mr. Malata admitted that the said office was restructured, but he vehemently disputed the claim by Dr. Nshala that Mr. Sekule is also a State Attorney to represent the interests of the Government in the matter. He

clarified that, the applicability of the cited Order is not automatic and for a lawyer/advocate working in a public institution to be a State Attorney he/she must be designated as such, and the notice to that effect should be advertised in the Government Gazette. It was the argument of Mr. Malata that, since Dr. Nshala has failed to substantiate his claim with tangible evidence, his submission should be disregarded. He thus emphasized for the application to be granted and the applicant be accorded the right to be heard on the matter.

We have carefully perused the record of the application and respectfully considered the oral submissions by the counsel for the parties. The main issue for our determination is whether or not the applicant is an interested party to be joined in the Civil Application No. 432/17 of 2017 and the intended appeal against the decision of the High Court in Land Case No. 129 of 2006. It is common ground that the question of joining a party or otherwise to the court proceedings is a matter of law. In the matter at hand, the relevant and applicable provisions of the law, as cited by the applicant include, among others, sections 6 (a) and 17 (1) (2) (a) and (b) of the AG's Act. For the sake of clarity, we have endeavored to reproduce the said provisions herein below:-

Section 6 (a) provides that:-

*"In the discharge of the functions under sub-article 3 of the Article 59 of the Constitution, the Attorney General shall have the exercise of the following powers:-*

- (a) To appear at any stage of any proceedings, appeal, execution or any incidental proceedings before any court or tribunal in which by law the Attorney General right of audience is excluded."*

In addition, Section 17 (1) (a) (2) (a) and (b) of the same Act provides that:-

*"17 (1) Notwithstanding the provisions of any written law to the contrary, the Attorney General shall have the right of audience in proceedings of any suit, inquiry on administrative body which the Attorney General considers:-*

- (a) To be of public interest, involves public property.*

*17 (2) In the exercise of the powers vested in the Attorney General with regards to the provisions of subsection (1), the Attorney General shall:-*



- (a) Notify any court, tribunal or any other administrative body of the intention to be joined to the suit, inquiry or administrative proceedings; and*
- (b) Satisfy the court, tribunal or other administrative body of public interest or public property involved...”*

On the basis of the stated position of the law, there is no doubt that the applicant has clearly indicated, in the Notice of Motion, the supporting affidavit and the oral submission by Mr. Malata, the public interest and the Government/public property he intends to protect, if joined as a party in the application and the intended appeal. We are however, mindful of the fact that, when opposing the application, Dr. Nshala, among others, argued that, the dispute between the first and fourth respondents, is based on the landlord and tenant relationship and the same is governed by a lease agreement which the applicant is not a party. He further argued that, since the execution order granted to the fourth respondent was only on the eviction of the second respondent from the suit premises, there are no any public interest or Government/public properties involved to justify the involvement of the applicant in the matter.

Though, we are in agreement with Dr. Nshala that, the Ruling in Execution No. 42 of 2017 (executing reliefs issued in Land Case No. 129 of 2006) did not issue orders for attachment or sale of the first respondent's properties, but it is important to note that in its Ruling the executing court had since indicated that, orders in relation to monies will be issued after determination of other matters pending before the court.

It is also not in dispute that, though the basis of the dispute between the parties is the lease agreement, where the applicant is not a party, but the leased and the suit premises involved is the property of the first respondent, claimed to be a Government/public property. It is also evident from the record that, the decree in Land Case No. 129 of 2006, among others, gave three sets of Orders, *to wit*, payment of the monies to the fourth respondent, vacant possession and the restoration of the fourth respondent to the suit premises. The said reliefs, by any means, have touched on the first respondent's properties.

So, in order to ascertain the arguments by Dr. Nshala, the next question for our determination is whether or not the properties of the first respondent involved in the Land Case No. 129 of 2006, Execution No. 42 of

2017, Civil Application No. 432/17 of 2017 and the intended appeal are of public interest to necessitate the involvement of the applicant to be joined as an interested party?

Pursuant to section 3 of the Public Corporations Act, Cap. 257 R.E 2002, a public corporation is defined as follows:-

*"Public corporation" means any corporation established under this Act or any other law and in which the Government or its agent owns a majority of the shares or is the sole shareholder."*

Moreover, under sections 9 (1) (2), 13 (1) of the same Act, a public corporation in which the Government is the majority shareholder is under the control and supervision of the Government. The Chairperson of the Board of such institutions is appointed by the President and the Board Members are appointed by the respective Minister. Besides, the Minister is mandated to supervise and give the Board of public corporation general or specific directives, as to the performance of its functions (See section 6 of

the same Act). The accountability of a public corporation to the Minister is spelt out under Part IV of the Public Corporation Act.

Notably, in the case at hand, the first respondent is a body corporate established by section 3 (1) and (2) of the NHC's Act capable of suing and be sued. As eloquently submitted by Mr. Malata and Mr. Sekule, the NHC's Act has corresponding provisions found in the Public Corporations Act indicated above. We will demonstrate. **One**, section 5 (1) of the NHC's Act establishes the Board of Directors to manage the business and affairs of the first respondent. **Two**, under section 5 (3), the Minister responsible for housing is mandated to supervise the first respondent's Board and give general or specific directives, as to the performance of its functions. **Three**, pursuant to the Schedule to the NHC's Act, the Chairperson of the Board is appointed by the President and its Members together with the Director General, who is the Chief Executive Officer of the first respondent, are appointed by the Minister. (See also Part IV of the NHC's Act). **Four**, the source of funds and resources of the first respondent are, among others, provided by the Parliament, (See Part V and specifically section 23 of the NHC's Act). Therefore, following the definition of a public corporation and all these provisions found in the NHC's Act, we are settled

that, the first respondent by all means is a public corporation in which the Government is a shareholder, hence under the control of the Government.

Therefore, since the first respondent is a public corporation then, her properties be in the form of monies or buildings fall in the category of Government/public properties, hence the provisions of sections 6(a) and 17(1) (a) of the AG's Act cited above, comes into play. That said, we are in agreement with the counsel for the applicant and the first respondent on the point that, properties of the first respondent are Government/public property, thus a public interest attracting the involvement of the applicant.

In addition, we have also noted that, among others the applicant has indicated at paragraph 17 of the supporting affidavit that, the judgement of the trial Court in Land Case No. 129 of 2006 is tainted with illegalities which he intends to raise during the intended appeal. Some of the alleged illegalities indicated are that,;-

*(a) The trial court Ordered for the eviction and restoration of the 4<sup>th</sup> respondent in the house in 2012, while her tenancy agreement ended in 2006, hence untenable in law;*

- (b) The trial court double compensated the 4<sup>th</sup> respondent*
- (c) The trial court failed to correctly evaluate the evidence adduced before it, thus deciding in favour of the 4<sup>th</sup> respondent; and*
- (d) Deciding the case basing on the non-existing legal law.*

We are mindful of the fact that, Dr. Nshala had since objected to the pointed illegalities claiming that the applicant has not demonstrated the same. We are unable to agree with Dr. Nshala on this point, because at this stage for an application of this nature, as eloquently submitted by Mr. Malata, the applicant is only required to indicate the interest and the public properties involved. Therefore, since the applicant has complied with the requirement of the law, we find the argument by Dr. Nshala to have no legal basis. It is therefore our finding that, since the basis of the Civil Application No. 432/17 of 2017 is connected to Land Case No. 129 of 2006 which involves Government/public properties, the application by the applicant to be joined as an interested party in that application and the intended appeal is justifiable.

We have however noted the argument of Dr. Nshala that, joining the applicant at this stage will complicate and delay the parties' case. With respect, we find this line of argument wanting, because this Court has always emphasized that the right to be heard is a fundamental principle of law which courts of law must jealously guard against. See Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 and the Courts' decisions in **Mbeya – Rukwa Autoparts Ltd v. Jestina Mwakyoma** [2003] T.L.R 251; **Tang Gas Distributors Limited v. Mohamed Salim Said and 2 Others**, Civil Application No. 68 of 2011 (unreported) and **The Attorney General v. Tanzania Ports Authority and Mr. Alex Msama Mwita**, (supra).

In our view, it is appropriate to join the applicant at this stage and accord him the opportunity to be heard on the application and the intended appeal. According the right to be heard to all parties concerned and interested on this matter will enable the Court to effectually and completely adjudicate and settle all questions related with the case. Ultimately, all parties will be bound by the decision, hence, avoidance of multiplicity of suits and minimizing chances of lodging revision applications, which could

further prolong the matter, as in **The Attorney General v. Tanzania Ports Authority and Mr. Alex Msama Mwita** (supra).

Before penning of, we should point out that, we have noted that, in his submission Dr. Nshala had since argued that in terms of the Restructuring Order Mr. Sekule is also a State Attorney and can as well represent the Government/public interests in the matter, this was however disputed by Mr. Malata, who argued that, the restructuring Order does not apply automatically. He clarified that, for a lawyer or an advocate to become a state attorney, there must be a formal designation and the same should be published in the Government Gazette. Therefore, since Dr. Nshala has not substantiated his claim with tangible evidence, we find his submission on this point to be unfounded.

It is therefore our further settled position that, since the right to be heard entails not only to represent and know the other party's case, but present one's own, it would be in the interest of justice that the applicant is given an opportunity of being heard. This, in our view will be in conformity with the principles of natural justice and fair hearing.



In view of the aforesaid, we find the applicant's application to have merit and it is hereby granted. Since parties have not pressed for costs, we make no orders as to costs.

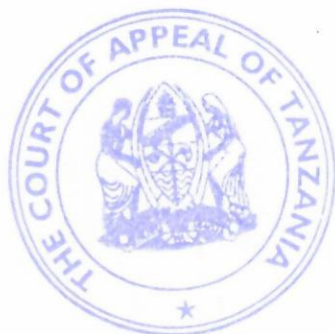
**DATED at DAR ES SALAAM this 11<sup>th</sup> day of November, 2019.**

**S. S. MWANGESI**  
**JUSTICE OF APPEAL**

**M. A. KWARIKO**  
**JUSTICE OF APPEAL**

**R. J. KEREFU**  
**JUSTICE OF APPEAL**

The Ruling delivered this 14<sup>th</sup> day of November, 2019 in the presence of Ms. Joyce Yonazi, State Attorney for the Applicant/Interested Party and also holding brief for Mr. Aloyce Sekule, Counsel for the first Respondent and in the absent of the Counsel for the second Respondent though dully served and in the presence of Mr. Alex Mushumbusi, Counsel for the third Respondent and Dr. Rugemeleza A. K. Nshala, Counsel for the fourth Respondent, is hereby certified as a true copy of the Original.



  
**H. P. NDESAMBURO**  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**