THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF TANZANIA

THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

CIVIL REVISION NO. 1 OF 2021.

(From Misc. Civil Application No. 29 of 2020, in the Court of Resident Magistrate of Mbeya, at Mbeya).

THE ATTORNEY GENERAL.....APPLICANT

VERSUS

1. THE TRUSTEES OF THE TANZANIA NATIONAL PARKS.....1ST RESPONDENT

2. MACHANYA NEMBA SINGU.....2ND RESPONDENT

3. UGUMBA IGEMBE..... 3RD RESPONDENT

RULING

07. 01 & 11. 01. 2021.

UTAMWA, J.

This is a ruling on a revisional application made before this court. The application is made by the applicant, THE ATTORNEY GENERAL (the AG) under a certificate of urgency. It is against the three respondents, THE TRUSTEES OF THE TANZANIA NATIONAL PARKS, MACHANYA NEMBA SINGU and UGUMBA IGEMBE (hence forth the first, second and third respondent respectively). The same was preferred under sections 79(1)(c) and 95 of the Civil Procedure Code, Cap. 33 R. E. 2019 (the CPC), section 44(1)(b) of the Magistrates Court Act, Cap. 11 R. E. 2019 (the MCA) and

section 17 (1) (a) of the Office of the Attorney General (Discharge of Duties) Act, Cap. 268 R. E. 2019. It is supported by an affidavit of one Catherine Benard Paul, learned State Attorney.

In this application, the applicant was represented by Mr. Joseph Tibaijuka, learned State Attorney. Mr. Hebert Kihaka, another learned State Attorney represented the first respondent in this matter. The two respondents were represented by Mr. Faraji Mangula, learned advocate.

The first respondent however, did not file any counter affidavit to object the application. Her representative did not even appear on the date set for hearing of the application though he had appeared in court in the previous date. This court thus, upon the consensus of the present parties, directed the matter to be heard ex-parte regarding the first respondent. It did so on the reasons shown in the order dated 7th January, 2021. The second and third respondents (hereinafter also called the two respondents) objected the application by the counter affidavit affirmed by Mr. Faraji Mangula, their learned counsel. They also lodged a preliminary objection (PO) through the same counsel. The PO was based on the following grounds; firstly, that this court had no jurisdiction to entertain this application because, it is challenging an interlocutory order which cannot not in law, be subject of revision. Secondly, that, the revision is not tenable by virtue of the principle of *res sub judice*.

As required by the law, this court had to firstly consider and determine the PO before it could hear the revisional application at hand. It ultimately overruled the PO vide reasons embodied in the order dated the

same 7th January, 2021, hence the hearing of this revisional application on the same date.

Before considering the application at hand, it is incumbent, in my view, to narrate the background of this matter, albeit briefly, for the sake of a proper understanding of this ruling. It goes thus, according to the record and the arguments offered by the parties: the two respondents in this matter, lodged a suit (No. 38 of 2020) before the Court of Resident Magistrates of Mbeya, at Mbeya (the lower court) seeking for some reliefs. The suit is against the first respondent and is currently pending before the lower court. That suit followed a claim that, the first respondent had unjustifiably detained 900 cows (henceforth the cattle) belonging to the two respondents.

Along with the suit, the two respondents filed an application No. 29 of 2020 before the same lower court and against the same first respondent. It was made by way of a chamber summons, supported by two affidavits. The same was preferred under Order XXXVII rule 1 (a), (b) and section 95 of the CPC. In that application, the two respondents sought three kinds of prayers; they firstly sought for what they termed as an *ex-perte* interim order directing the first respondent and/or her representatives to release the cattle to them for grass, water and medication pending the determination of the main application *inter-partes*. Secondly, the two respondents moved the lower court to hear the application *inter-partes* and grant an interim order directing the first respondent and/or her representatives to release the cattle to the two respondents pending the determination of the main case. The third prayer

in the application was for the lower court to hear the application *inter-partes* and grant an interim injunction restraining the first respondent and/or her representatives from disposing of the cattle pending the determination of the main case.

The lower court ultimately made an order (*ex-parte*) on the 31st December, 2020, directing the first respondent to release the cattle to the two respondents pending the hearing and determination of the main suit (No. 38 of 2020) before it. The revisional matter before this court, thus, basically seeks to revise the proceedings and the order of the lower court made on the 31st December, 2020, (henceforth the impugned order) for being procured illegally.

For purposes of convenience in this ruling, the suit pending before the lower court will be branded the main suit, and the pending application there will hereinafter be called the main application or the application in short.

I now revert to the revisional application. According to the chamber summons, the applicant prays for the following orders:

i. For this court to examine the legality, correctness and propriety of the proceedings and the impugned order of the lower court in the said Civil Application No. 29 of 2020.
ii. For this court to revise the said order of the lower court and set it aside for being improperly procured.
iii. For this court to make any other order it deems fit.
iv. For costs of this application to be provided.

The affidavit supporting the application essentially stated that, the applicant has a legal duty of intervening and protecting public interests and public properties at any time in the courts of law and tribunals. The duty follows the requirements under the Constitution of the United Republic of Tanzania, 1977 (the Constitution) and Cap. 268 cited earlier. Such properties include those owned by the Central Government, Local Government and all its institutions established to implement some functions on behalf of the government. The first respondent is among such institutions and suing her legally needs joining the applicant. However, the two respondents did neither join nor serve the applicant with documents related to the matters pending before the lower court.

The affidavit further deponed that, the applicant was notified by the Senior Assistant Conservation Commissioner of the Ruaha National Park (henceforth the first respondent's officer) that the lower court had made the impugned order. The government and the public at large stands to suffer a great irreparable loss and hardship following the order. There is however, a point of illegality and irregularity in the order at issue. The public interests in this matter will thus, be met through affording the right to be heard to the applicant in the matter before the lower court.

In the counter affidavit, the learned counsel for the two respondents did not dispute most of the facts narrated in the background of this matter herein above. He however, basically affirmed that, the detention of the cattle lawfully owned by his clients was a serious derogation of animal welfare laws. The impugned order was made so that the cattle can be fed since the duty of the first respondent is to take care wild animals and not

livestock. The confirmed information also shows that, 50 cattle have died due lack of veterinary care and hunger. The death rate will escalate if there will be no court intervention. The impugned order was thus, made *ex-parte* against the first respondent pending the hearing of the application *inter-partes* on the 19th January, 2021 and summons was served to the first respondent for her to exercise the right to be heard.

The counter affidavit further shows that, the first respondent's officer (one Izumbe Msindai) was duly served with the copy of the impugned order. He however, refused to comply with it on the ground that no court can make such an order. He also vowed that, the cattle shall perish for hunger due to the fact that the two respondents have opted to go to court. He also promised not to respect any court since he is from the government. The two respondents thus, filed an application No. 1 of 2021 before the lower court for contempt of court so that the first respondent's officer could show cause as to why he had failed to comply with the court order. The application at hand is thus, a mechanism designed to facilitate the first respondent in avoiding compliance with the impugned order which is lawful. The present application is thus, filed immaturely since there is the application before the lower court for hearing *inter-partes*. The applicant and the first respondent have nothing to lose in this matter, but the two respondents stand to lose their cattle which are in danger for lack of feeding and veterinary services. The interests of justice thus, demand that the orders sought in the application at hand be denied.

At the oral hearing of the application at hand, the learned State Attorney for the applicant adopted the contents of the affidavit. He further

submitted that; the impugned order was tainted with illegalities and incorrectness because, the AG was not joined in the application as required by the law. Section 6(2) of the Government Proceedings Act, Cap. 5 R. E. 2019 (hereinafter called the GPA) requires all suits against the government to be preceded by a statutory notice and a copy thereof to be served to the AG. Furthermore, section 6(3) requires suits against the government to be brought against the AG and copy of the plaint to be served to the Solicitor General, a government Ministry or department concerned or an officer alleged to have committed the civil wrong on which the suit is based.

Moreover, the learned State Attorney argued that, section 6(4) guides that, suits against the government shall be instituted in the High Court of Tanzania (or shortly the High Court). It was also his contention that, according to section 6(5) the AG has to be joined as the co-defendant in each suit against the government. Non-joinder of the AG vitiates the proceedings. He supported this contention by a decision of this court in **MSK Refinery Limited v. TIB Development Bank Limited and another, Misc. Civil Application No. 307 of 2020, High Court of Tanzania, at Dar es Salaam** (unreported). He added that, section 7 of the same Act, provides that, no suit against the government shall be filed in any court other than the High Court. The learned counsel further cited the case of **Natural Wood (T) Ltd v. The Attorney General, Civil Case No. 139 of 2014, High Court of Tanzania, at Dar es Salaam** (unreported) to support his contention. He added that, in the said precedent, this court struck out the suit since the plaintiff did not comply with section 6 of GPA.

The learned State Attorney also contended that, the term "suit" was defined in the **MSK Refinery case** (supra) as proceedings of a party against another in a court of law. He further defined the term "government" as including ministries, agencies, public corporations and officers of the government. He supported this definition by section 6(3) of the GPA as amended by section 26 of the Written Laws (Miscellaneous Amendment) Act, No. 1 of 2020. He added that, in the matter at hand, the first respondent was the government since it is an executive agency which falls under the definition of the term "government" offered above.

The learned State Attorney thus, submitted that, owing to the provisions of the law cited above, the two respondents had the duty to join the AG in the proceedings before the lower court, but they did not do so. He thus, urged this court to grant the application at hand.

In his replying oral submissions, the learned counsel for the two respondents conceded to the stance of the law as guided by the provisions of the GPA cited by the learned State Attorney above. He specifically conceded that, joining the AG in suing governmental institutions is a legal requirement. However, he contended that, the first respondent is not among such institutions. This is because, she is governed by the Tanzania National Parks Act, Cap. 282 R. E. 2002 (hereinafter called the TANAPA Act in short). Section 8(1)(b) of the Act establishes a Board of Trustees (i. e. the first respondent) and such trustees are capable of suing and being sued in their corporate name of the **Trustees of the Tanzania National Parks.** The TANAPA Act however, does not make any requirement for joining the AG in suits against the first respondent.

The learned counsel thus, argued that, the GPA does not apply to the first respondent in the matters before the lower court. Such proceedings were thus, proper in law and the impugned order was legally proper. He also attacked the learned State Attorney for his failure to cite any law which might have amended the TANAPA Act and included the requirement to join the AG in suits against the first respondent.

The learned counsel for the two respondents further argued that, the **MSK Refinery case** (supra) and the **Natural Wood case** (supra) cited by the learned State Attorney are distinguishable from the matters under consideration. This is because, both were filed before this court, the defendants in those cases were governmental agencies and the government had interests in them. However, this is not the case in the matters before the lower court since the government has no any interests in the first respondent.

Alternatively, the learned counsel for the two respondents submitted that, in case this court finds that the first respondent falls under the definition of the term "government" as argued by the learned State Attorney, then the applicant should be directed to apply before the lower court and be joined as party to the proceedings. He also argued that, the applicant has approached this court without any clean hands since he is trying to assist the first respondent in disobeying the impugned order by filing this application. This application is thus, used as a way of ensuring that the two respondents suffer loss. He also adopted the contents of the counter affidavit. He further argued that, had the first respondent been the government, the applicant could not have joined him as the respondent in

the matter at hand. This course thus, vindicates the argument that the first respondent is not among government institutions.

The learned counsel for the two respondents further prayed for this court to make orders and conditions that may ensure safe custody of the cattle since they are delicate and subject to death. He also submitted that, the two respondents are ready to deposit security for costs, but be permitted to stay with their cattle pending the proceedings in court. He based his prayers under articles 107A(2) and 107B of the Constitution. He also urged this court to dismiss the application.

In his rejoinder submissions, the learned State Attorney argued that, the first respondent is a government agency because, she reports to the Minister responsible for National Parks vide section 9(g) of the TANAPA Act. The GPA thus, applies to her. Regarding the prayers made by the two respondents' counsel, the learned State Attorney submitted that, this is not a proper forum for the court to consider the prayers. The learned counsel for the two respondents should know the law on how to move this court for the prayers.

Upon being given leave by the court, the learned counsel for the two respondents underscored that, this is the proper forum for the prayers because courts should not be tied by procedural rules in making orders for the sake of justice.

When the court prompted the parties, the learned counsel for the two respondents submitted that, before the lower court, the two respondents had applied for a temporary injunction that was granted

through the impugned order. He also submitted that, according to the proviso to Order XXXVII rule 1 of the CPC it is improper for a court to make an order of temporary injunction against the government. It follows thus that, in case the court finds that the first respondent is government institution, then the impugned order will be improper. On his part, the learned State Attorney submitted that, according to the provisions of the CPC just cited above, no order of temporary injunction can be issued against the government.

I have considered the arguments by the parties, the record of this court and the lower court and the law. Indeed, the parties do not dispute on the position of the law as guided by section 6 of the GPA. They are also not at issue that, in procuring the impugned order the two respondents did not comply with the provisions of the GPA just cited above. The issues have thus, been narrowed down to two as follows;

i. *Whether or not the provisions of section 6 of the GPA apply to civil proceedings against the first respondent.*
ii. *In case the answer to the first issue will be affirmative, then what is the legal effect on the proceedings and the impugned order before the lower court which did not observe the provisions of section 6 of the GPA.*

Regarding the first issues, it is clear that, while the learned State Attorney for the applicant wants this court to answer it affirmatively, the learned counsel for the two respondent advocates for a negative answer to it. In my view, there is a lot of sense in the contention by the learned State

Attorney for the applicant. This view is based on the following reasons: in the first place, as correctly contended by the learned State Attorney, the provisions of section 6 (3) of the GPA as amended by section 25 of Act No. 1 of 2020 (supra) speaks in his support. These provisions guides mandatorily that, all suits against the Government shall, upon the expiry of the notice period, be brought against the **Government, ministry, government department, local government authority, executive agency, public corporation, parastatal organization** or **public company** that is alleged to have committed the civil wrong on which the civil suit is based, and the Attorney General shall be joined as a necessary party.

In my further view, the first respondent who is constituted by the Trustees of the Tanzania National Parks fits in the phrase "parastatal organization" mentioned under section 6 (3) of the GPA. It is unfortunate that neither the GPA nor the TANAPA Act which are the most pertinent legislation in the matter at hand defines the term "parastatal organization." However, other Acts do so. They describe it as including a body corporate established by or under any written law other than the Companies Act; see for example, section 2(b) of the Government Loans, Guarantees and Grants Act, Cap. 134 R. E. 2002, section 2 of the Income Tax Act, Cap. 332 R. E. 2019, section 2 of the Advocates Act, Cap. 341 R. E. 2019 and section 2 of the Parastatal Organisations Pensions Scheme Act, Cap. 372 R. E. 2002. The first respondent in the matter under consideration was, as observed earlier, established under section 8(1)(a) of the TANAPA Act. These provisions provide that, there shall be established for the purposes of the

Act, a Board of Trustees which shall be a body corporate by the name of "the Trustees of the Tanzania National Parks", with perpetual succession and a common seal.

Another reason that attracts answering the issue posed above affirmatively is that, the amendments of the GPA through Act No. 1 of 2020 were intended by the legislature to ensure that the AG is joined in suits against the government or institutions mentioned under section 6(3) of the GPA so as to enhance the conduct of cases against such institutions which involve interests of the government; see the resent holding of this court (Kisanya, J.) in the case of **Wambura Maswe Karera and 5 others v. The Village Council of Mori and another, Civil Case No. 5 of 2020, High Court of Tanzania, at Musoma** (unreported).

The sub-issue at this juncture is thus, whether or not the government has interests in the first respondent. There are various indicators which show that the government has a lot of interests in the affairs of first respondent. In fact, the first respondent literally performs its duties on behalf of the government. The duties and functions of the first respondent and the *modus operandi* for performing them for example, as stipulated under the TANAPA Act, clearly vindicate the view just highlighted above. This Act has in fact, gone through various amendments including those effected by the Written Laws (Miscellaneous Amendments) Act No. 11 of 2003, the Finance Act, No. 13 of 2008, the Finance Act No. 4 of 2013, Act No. 1 of 2020 (supra) and the Finance Act No. 8 of 2020. The major objective of the TANAPA Act, according to its long title was to provide for

the establishment, control and management of national parks and for related matters.

The national parks just mentioned above, are in law, established by the President with the consent of the National Assembly, through proclamations published in the Gazette, by declaring any area of land to be a national park; see section 3 of the TANAPA Act. The first respondent's duty and function are thus, to control, manage, administer, and maintain such national parks established by the President; see section 17 of the Act. The fund and resources of the first respondent consist of, *inter alia*, such sums as may be provided for the purposes of the national parks by the Parliament, either by way of grant or loan and any loan or subsidy granted by the Government; see sections 9(a) and (b) of the Act.

Furthermore, according to section 9 of the TANAPA Act as amended by the Finance Act No. 8 of 2020, any sum, fees, monies, charges payable under the TANAPA Act or any subsidiary legislation made thereunder, shall be collected by the Tanzania Revenue Authority and remitted to the Consolidated Fund. Again, it is the duty of the first respondent, before the commencement of each financial year, to cause to be prepared estimates of the revenue and expenditure for that year. The annual estimates shall contain all estimated expenditure of the funds of the Trustees for the financial year concerned and the first respondent shall approve recurrent and development expenditure. Such annual estimates shall be submitted to the Minister responsible for National Parks for approval and laying before the National Assembly in accordance with the provisions of the Budget Act.

Moreover, by virtue of paragraph 1 of the Second Schedule to the TANAPA Act (with the heading of the Constitution, Proceedings, acts, etc. of the Trustees), the first respondent consists of the following members; the Chief Conservator of Forests, Game Warden and the Permanent Secretary to the Ministry responsible for National Parks and the Chairman of Tanzania Tourist Board, not more than ten and not less than six other persons appointed by the President. The President also appoints one of the trustees to be the Chairman.

What has been demonstrated by the provisions of the TANAPA Act above regarding the duties, functions, control, management and constitution of the first respondent, vindicates the view highlighted above that the government has a lot of interests in the first respondent's affairs. The sub-issue posed above is therefore, affirmatively answered.

The argument by the learned counsel for the two respondents that the first respondent is governed by the TANAPA Act only, in exclusion of the GPA, and that the requirements set under section 6 of the GPA are not included in the TANAPA Act, is in fact, untenable. This is because, it is common knowledge that, a matter before a court of law can be governed by various legislation. This is the spirit embodied under section 2 of the CPC which provides that, subject to the express provisions of any written law, its (the CPC) provisions shall apply to all proceedings in the High Court, courts of resident magistrates and district courts. This clearly means that, though the CPC is the major law of our civil procedure, other legislation also apply to civil proceedings. Such other legislation, I presume,

include the GPA where the suit involves parties specified under section 6 of that Act, like in the application before the lower court.

Furthermore, the contention by the learned counsel that the course opted by applicant in the matter at hand in joining the first respondent as his rival party together with the two respondents indicates that the first respondent is not among governmental institutions, is also lame. This is because, what determines the status of the first respondent is the law and not the course opted by the applicant. Even if it is presumed (without deciding) that the applicant was wrong in joining the first respondent with the two respondents, that would not change the law. Parties' acts in conducting court proceedings do not change what the law has already legislated.

Yet again, I do not accept the contention by the counsel for the two respondents that, since the TANAPA Act guides that the first respondent is a corporate body which can sue or be sued in its corporate name (as shown earlier), then it is unnecessary to join the AG and comply with other requirements under section 6 of the GPA. My disagreement with him are based on the fact that, the guidance of the Act only meant that, the first respondent is a legal person who can sue or be sued in her name. That guidance does not go to the extent of excluding the applicability of the section 6 of the GPA in court proceedings against the first respondent.

I have also considered the contention by the learned counsel for the two respondents that, the applicant can apply to be joined in the proceedings before the lower court set for hearing of the application on

19th January, 2021. I do not take this contention seriously this is because; in essence the second and third prayers in the application had been granted through the impugned order. This view is supported by the record of the application before the lower court. The record shows that, upon making the impugned order the presiding magistrate did not fix any date for the hearing of the application *inter-partes*. This presupposes that, the application had been finally determined by the impugned order. It is more so since even the third prayer was a mere disguise in the record. This is because, the first respondent and his representatives could not be restrained from disposing of the cattle which they could not have upon being released to the two respondents following the impugned order, in case the same could be complied with.

The argument by the learned counsel for the two respondents that the application had been fixed for hearing regarding the rest of the prayers on the 19th January, 2021 is not thus, supported by any record. In fact, what was fixed on the said 19th January, 2021 was only the mention of the main suit according to the record of the main suit itself.

Certainly, even if it could be presumed (without deciding) that the lower court had fixed the hearing of the application on the said 19th January, 2021 as contended by the two respondents' counsel, that would not make any sense to the justice of the matter. This is because, the pending main application before the lower court would be nugatory for the reasons shown above. In fact, I cannot imagine as which would be the purposes for hearing the parties *inter-pates* in that pending application on the said 19th January, 2021. That hearing would, in fact, be a mockery to

justice since both prayers have already been granted in disguise through the impugned order as demonstrated above.

Owing to the reasons adduced above, I hereby answer the first issue affirmatively that; the provisions of section 6 of the GPA in fact, apply to civil proceedings against the first respondent. This finding attracts testing the second issue.

In relation to the second issue, the answer is simple. Since I have found the first issue affirmatively, and since it is not disputed that the two respondents did not comply with the mandatory provisions of the section 6 of the GPA, then it is clear that, the proceedings regarding the application before the lower court were improper and the impugned order cannot stand. This is because, the proceedings were not filed before this court, the two respondents did not join the AG as a necessary party/respondent as required by the law cited above and as rightly contended by the learned State Attorney for the applicant. The law is clear as shown above, that, failure to join the AG vitiates the proceedings. I am thus, persuaded by the decision in the **MSK Refinery case** (supra), that, such violation of the provisions of section 6 of the GPA is fatal. I however, distinguish the **Natural Wood case** (supra) from the matter at hand. This is so because, in that case, the violation was related to failure by the plaintiff to serve a copy of the plaint to the Ministry concerned with the suit, which is not the case in the matter at hand. It is also apparent that the **Natural Wood case** (supra) was decided in June, 2019 even before the amendments made through Act No. 1 of 2020 were in place.

I also agree with the learned State Attorney for the applicant that, the term suit, as defined in the **MSK Refinery case** (supra), means any proceedings of a party against another in a court of law. This definition is also supported by the Black's Law Dictionary, 9th Edition, West Publishing Company, St. Paul, 2009, at page, at page 1572. It follows thus that, though the impugned order was made in a mere application, such proceedings amounted to a suit in which the provisions of the GPA could apply. Besides, the long title of the GPA itself presupposes that, it applies to all civil proceedings against institutions mentioned under section 6(3) of the GPA as amended by section 25 of the Act No. 1 of 2020. The long title reads thus; "An Act to provide for the rights and liabilities of the Government in civil matters, for the procedure in civil proceedings by or against the Government and for related matters."

Due to the reasons shown above, I hereby answer the second issue thus; the legal effect of the failure to observe the provisions of section 6 of the GPA on the proceedings and the impugned order before the lower court, was that, the proceedings were rendered a nullity and the consequent impugned order improper.

Regarding the prayers made by the learned counsel for the two respondents, I also agree with the learned State Attorney for the applicant that, this was not a proper forum for the prayers. The mode of making applications before this court is clearly governed by Order XLIII rule 2 of the CPC. It guides thus, every application to the Court shall, unless otherwise provided, be made by a chamber summons supported by affidavit: provided that, the Court may where it considers fit to do so,

entertain an application made orally or, where all the parties to a suit consent to the order applied for being made, by a memorandum in writing signed by all the parties or their advocates, or in such other mode as may be appropriate having regard to all the circumstances under which the application is made.

It could not thus, be proper for the learned counsel for the two respondents to lodge the prayers of that serious nature orally through replying submissions to the arguments in support of the revisional matter before this court. It is more so because, he could not base the prayers under articles 107A(2) and 107B of the Constitution. This is because, article 107A(2) only sets principles that courts of law are enjoined to observe in determining matters before them. As to article 107B, it merely propounds the doctrine of independence of the judiciary. I do not see how the learned counsel for the respondent could move this court under such provisions of the Constitution only. It was also held by the Court of Appeal of Tanzania (CAT) in the case of **H.M. Chamzim and 71 Others v. Tanzania Breweries Limited, Civil Appeal No. 57 of 2004, CAT at Dar es Salaam** (unreported, at page 11-12) that, while the independence of the judiciary in administering justice is guaranteed under article 107B, such independence shall be exercised and enjoyed subject to the provisions of the Constitution itself and the laws of the land. Such laws of the land include Order XLIII rule 2 of the CPC (supra) which the learned counsel has skipped.

The learned counsel for the two respondents is thus, reminded that, rules of procedure were made to be followed since they are intended to aid

justice by setting procedure that assist courts to reach into fair and just decisions, otherwise they will rendered nugatory. The CAT also underlined the importance of respecting procedural rules, in the case of **Zuberi Mussa v. Shinyanga Town Council, Civil Application No. 100 of 2004, CAT at Mwanza,** page 8 (unreported) by holding that, even article 107A (2) (e) of the Constitution which prohibits courts from being overwhelmed by procedural technicalities, is not a warrant for ungrounded disregard to procedural rule.

Again, in the case of **Mohamed Iddi Mjasiri v. Mr. Jayalami J. Joshi [1995] TLR 181,** the CAT held that, it could not be reached via such a breach of procedure. The procedure had to be followed since that would afford the other party opportunity to prepare himself appropriately. The CAT also underscored the respect to procedural rules in the cases of **Bahadir Sharif Rashid and 2 others v. Mansour Sharif Rashid and another, Civil Application No. 127 of 2006, CAT at Dar es Salaam** (Unreported) and **Thomas David Kirumbuyo and another v. Tanzania Telecommunication Co. Ltd, Civil Application No. 1 of 2005, CAT at Dar es Salaam** (unreported).

I am also mindful of the principle overriding objective that was recently underscored in our laws. It essentially requires courts to deal with cases justly, speedily and to have regard to substantive justice; see section 6 of the Written Laws (Miscellaneous Amendments Act) (No. 3) Act, No. 8 of 2018 that amended the CPC. The principle was also underscored by the CAT in the case of **Yakobo Magoiga Kichere v. Peninah Yusuph, Civil Appeal No. 55 of 2017, CAT at Mwanza** (unreported). However, this

useful principle of law did not mean that procedural rules should not be observed at all. See the spirit underscored by the CAT in the case of **Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others, Civil Appeal No. 66 of 2017, CAT at Arusha** (unreported).

Owing to the reasons shown above, I will not positively consider the prayers lodged by the learned counsel for the two respondents. My advice to him is that, he still has time to properly move the court if he thinks fit to do so.

Having observed as above, I hereby grant the application with costs since costs follow event in law. The entire proceedings in the application before the lower court are hereby declared a nullity and are quashed. The impugned order dated 31st December, 2020 is also set aside. As to the main suit before the lower court, I will make no any order in relation to it. This is because, it was not subject to this revisional matter. It is thus, upon the applicant, if he still wishes, to take necessary legal steps so as to see that the law is being observed. It is so ordered.

JHK. UTAMWA.
JUDGE.
11/01/2021.

11/01/2021.
CORAM; JHK. Utamwa, J.
For applicant: Mr. Joseph Tibaijuka, State Attorney.
1ST Respondent: absent.
2ND and 3RD Respondents; present both and Mr. Faraji Mangula, Advocate.
BC; Mr. Patrick, RMA.

Court: ruling delivered in the presence of Mr. Joseph Tibaijuka, learned State Attorney for the applicant, the respondents No. 2 and 3 and Mr. Faraji Mangula, learned advocate for respondents No. 2 and 3, in court this 11th January, 2021.

JHK. UTAMWA.
JUDGE.
11/01/2021