IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

<u>AT DAR ES SALAAM</u>

CIVIL REVISION NO. 62 OF 2020

(Arising from Original Civil Case No. 157 of 2003 at the District Court of Ilala at Samora)

THE ATTORNEY GENERAL ------------------ 1ST APPLICANT

THE TREASURY REGISTRAR --------------- 2ND APPLICANT

VERSUS

SELEMAN KIBWASALI -------------------- 1ST RESPONDENT

JOSHUA O. D. KILONZO ----------------- 2ND RESPONDENT

INNOCENT MWILENGE -------------------- 3RD RESPONDENT

GABRIEL KAJIRU ---------------------------- 4TH RESPONDENT

VENANCE NYIGO ---------------------------- 5TH RESPONDENT

FRANK OTAIGO ----------------------------- 6TH RESPONDENT

Date of Last Order: *03/11/2021*
Date of Ruling: *03/11/2021*

RULING

MGONYA, J.

The Revision before this Honourable Court was instituted ***suo-motto*** by the Court in order to resolve the controvency that emerged and reported administratively that the Decree emanated from the Judgment of the original **Civil Case No. 157 of 2003 at the District Court of Ilala at Samora**

dated 25th January, 2016 do not tally/reflect the decision thereto.

When this matter was called for hearing today, the Applicants herein were represented by the learned State Attorneys **Mr. Daniel Nyakia** and **Ms. Zamaradi Johanes**. Whereby the Respondents were represented by the learned Counsel **Mr. Godwin Muganyizi** respectively.

It was stated by both Parties' Counsel that the issue for revision is the ambiguity facing the Decree of the above stated Civil Case which do not reflect the Judgment delivered on **25th January, 2016** from **Civil Case No. 157 of 2003** of which was executed vide **Misc. Civil Application No. 214 of 2016**. The said Decree is also said to have resulted to issuance of the **Certificate** thereto.

In the cause, the Court informed the Parties that in preparation of determining the revision before the Court, the original file of the **Civil Case No. 157 of 2003** was procured from the trial Court and the same is before this Honourable Court. After that averment, in order to reach the immediate resolution of the controvency at hand, both Parties' Advocates prayed the Court to read the handwritten Judgment's reliefs thereto for comparison to the reliefs demonstrated in the three Decrees they have at hand said to have originated from the said decision.
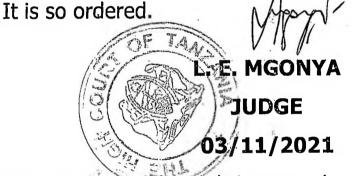
The Counsel's prayer was granted and the exercise took place accordingly. After the Court and both Parties herein with their respective Advocates going through the Original Judgments (handwritten and typed) from the record, we have all confirmed that, indeed the Original Judgment do not tally with the Decree emanated thereto both from the file and copies supplied to the Parties.

In the event therefore, this Court proceeds to order the following:

- That each party will be availed with the certified copies of the handwritten and the original typed Judgments for their perusal and reference;

- That the Parties will also be availed with the certified copy of the **Defective Decree** from the record which do not tally with the Judgment of the Court for their reference;

- As this is a very straight forward legal defect of which is **FATAL** detected by both Parties and the Court, I proceed to order the following:

   (i) *This Court proceeds to nullify and set aside all the Decrees said have emanated from the Civil Case No. 157 of 2003 dated 25th January, 2016 before the District Court of Ilala at Samora;*

(ii)   This Court further nullifies and set aside the Certificate of the trial Court emanating from the defective Decree (s);

(iii)   The original file of Civil Case No. 157 of 2003 be remitted to Kinyerezi District Court (the trial Court) for the same to prepare the proper Decree and Certificate which will tally/reflect the Decision of the Court and return the file to the High Court with immediate effect for further actions; and

(iv)   This matter is scheduled for mention on necessary Orders on 16/11/2021 at 14:00 Hrs.

It is so ordered.

L. E. MGONYA

JUDGE

03/11/2021

Court: Ruling delivered in my chambers in presence of Mr. Daniel Nyakia and Zamaradi Johanes, State Attorneys for the 1st and 2nd Applicants, Mr. Godwin Muganyizi, Advocate for the Respondents in company of all Respondents and Ms. Msuya, RMA.

L. E. MGONYA

JUDGE

03/11/2021

4