

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**  
**AT DAR ES SALAAM**

**CIVIL CASE No. 44 OF 2019**

**AUA INDUSTRIAL GROUP LIMITED.....PLAINTIFF**

Versus

**WIA GROUP LIMITED.....DEFENDANT**

**ORDER**

**10/6/2019**

Coram: Hon. De-Mello, J;

For the Plaintiff: Shamim Kikoti Adv.

For the Defendant: Charles Tumaini/Simon Patrick

CC: Placidia – Present

**Shamim:** The matter is for mention. Written Statement of Defence has been served and filed, supposedly, on the 28/5/2019. We however, find the need for a Reply to the Written Statement of Defence. We thus pray for Leave to do so, seven (7) days, is adequate Madam Judge.

**Charles:** We do not object to the prayers. However, the Plaintiff reveal the drawer to be one Allen A. J. Mwakyoma, purportedly disqualified to practice. He is of Roll No. 1792.

**Court:** Records indicate the same from the tams.judiciary.

**Charles:** This, Madam Judge, is in contravention with section 43 of the Advocate Act Cap. 341 R.E. 2002, read together Notary Public & Commissioners for Oath Act Cap. Reg. 6. Section 43 excludes disqualified Advocates from drawing of pleadings. It is however, section 41 Madam Judge, I beg to revisit. Similarly Reg. 6 of the Notary's Public and Commissioner for Oaths, the pleadings before your Court are incompetent. See the also the case of **Ismail Ally Salehe vs. Akbar Amir H. Amir & CATS Ltd., Civil Case No. 156 of 2016 High Court Dar Es Salaam Registry**, in which Mutungi Judge, had this to say in page 8, "... **against the Advocates Act and punishable and has to be summarily rejected, the Plaintiff is thus Nullified... costs to follow.**

**Shamim:** Madam Judge, It has come to my knowledge now, as of this situation. However, the alleged Advocate acted as a drawer only and not in conduct of the case. The case referred by Counsel is distinguishable as Advocate Mwakyoma did prepare the pleadings as seen but not in conduct. He never attested to qualify as a Commissioner for Oaths as evidenced. In the interest of justice, the matter is for Struck Out as opposed to dismissal, as it is yet to be heard on its merits. I hence pray to amend the pleadings in view of replacing a qualified Drawer alone and, not the Plaintiff as a whole.

**Patrick:** The whole Plaintiff is in the light of the disqualified Advocate. It renders it all a Nullity. . They ought to be Rejected, He even acted as Notary Public by drawing the Pleadings. We however concede to **Struck Out** and **REJECTED** as proposed and not **DISMISSAL**.

**Court:** Vivid and, quite apparent, the observation by Counsel Charles and Patrick has it that, Advocate Mwakyoma is disqualified from practicing. My search from tams.judiciary website, had confirmed the position. He is not privy and, qualified to practice not only to preparing pleadings but even notarizing legal documents. It is even worse if he appears to conduct any suits, unless cleared. The law under section 41 of the Advocates Act Cap. 341, let alone a series of decided cases, including the cited one in Ismail Ally Salehe (supra) by Mutungi Judge, speaks louder of itself. The document by means of a Plaint that is before this Court is a Nullity. The little the Court can offer is to **REJECT** as opposed to **DISMISSAL** as costs is granted, considering a Written Statement of Defence already filed and, in place.

It is ordered.



  
**J. A. De-Mello**

**JUDGE**

**10/6/2019**