

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 102 OF 2013

GODFREY ENOCK MKOCHA APPLICANT

VERSUS

TWIGA PAPERS PRODUCTS LIMITED RESPONDENT

**(Application for extension of time to file Revision from the
decision of the High Court of Tanzania(Land Division)
at Dar es Salaam)**

(Longway, J.)

dated the 26th day of January, 2007

in

Land Case No. 240 of 2004

.....

RULING

11th & 19th September, 2013

LUANDA, J.A.:

The above named applicant has lodged an application in this Court for an extension of time so as to enable him file revisional proceedings in respect of the High Court (Land Division) decision in Land Case No. 240 of 2004 of 26/1/2007 (Longway, J.) between the respondent and The Principal Secretary Ministry of Works and The Attorney General. The applicant was not a party to that Land case.

On 6/8/2013 when the application had already been cause listed for hearing, the respondent through Mr. Dilip Kesaria, learned advocate raised a preliminary objection consisting of four points, a notice of which was served upon the applicant. The points raised are:-

- 1. The Application is fatally defective for failure to enjoin the Defendants in Land case No. 240 of 2004 whose Judgment is sought to be revised in the intended application for revision; and*
- 2. That the lower Court is no longer seized with the proceedings in Land Case No. 240 of 2004 whose Judgment is sought to be revised in the intended revision;*
- 3. That the Applicant as a service Tenant of the Government had no locus to be enjoined in the suit in the lower Court which decided the lawful ownership of the suit premises as between the Government and the Respondent;*

4. Paragraphs 12, 13, 14,15,16,17 and 18 of the Applicant's Affidavit are argumentative and contain conclusions.

Mr. Kesaria argued with force the four points he had raised; whereas Mr. Beatus Malima, learned counsel for the applicant resisted.

However, having carefully read the points raised, points 1,2, and 3 do not need much discussion for simple reason that the same were prematurely raised. I am saying so because the three points reproduced above have no bearing whatsoever to the application for extension of time. Rather they tried to go into the merits of the revisional proceedings which is yet to be lodged. The respondent has jumped the gun.

Regarding point (4) above, Mr. Kesaria argued that paragraphs 12 to 18 contained arguments and conclusions and so the same should be struck out. Mr. Malima said the said paragraphs do not contain arguments and conclusions. The affidavit is proper.

It is well settled that an affidavit for use in Court being a substitute for oral evidence should only contain statements of facts and not extraneous matters by way of objection or prayer or legal argument or conclusion (See: **Uganda v. Commissioner of Prisons, Ex-Parte Matovu** [1966] EA 514)

I have carefully read the said paragraphs, I was unable to see any arguments or conclusions in the said affidavit as stated by Mr. Kesaria. In the eyes of the law the affidavit is proper and is in order.

In sum, the preliminary objection raised has no merits. The same is dismissed with costs.

DATED at DAR ES SALAAM this 17th day of September, 2013.

B.M. LUANDA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


P.M. KENTE
REGISTRAR
COURT OF APPEAL