

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

MISCELLANEOUS CIVIL CAUSE NO. 64/1996

AFRA MASUDI APPLICANT
Versus
KWACHA TRANSPORT COMPANY AND) RESPONDENTS
5 OTHERS)

R U L I N G

CHIPETA, J.:

In this matter, the petitioner, Afra Masudi, has petitioned this Court for, inter alia, an order that the respondents, M/S Kwacha Transport Co. and five others, do furnish audited accounts of the first respondent for the last 10 years.

Meanwhile, the petitioner filed an application for an order that this Court should appoint a fit and proper person other than the respondents as collector and caretaker of the first respondent's house rent and debts. The application cited section 95 of the Civil Procedure Code as the enabling provisions of the law.

Mr. Kilindu, learned counsel for the respondents, raised a preliminary objection to the application to the effect that the application is bad in law in that section 95 of the Civil Procedure Code does not, on its own, confer any powers on anyone to do or not to do certain things. With the consent of the Court, the learned advocates of the parties filed written submissions.

I have carefully considered those submissions and the authorities cited. In my view, there is ample authority for the provisions of section 95 of the Civil Procedure Code cannot be

invoked, on their own, where there is an express provision of law by which the remedy sought may be granted. (See Mulji v. Jadavji, (1963) E.A. 217).

For these reasons, whatever may be the substance of the application, I am constrained to reject this application for being not properly before the court. This application is accordingly struck out with costs.

B. D. CHIPETA

JUDGE

Ruling delivered in Chambers this 24th day of September, 1998.

B. D. CHIPETA

JUDGE

Mr. Maftah for applicant

Mr. Kilindu for Respondents.