

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

MISC.CIVIL.APPLICATION NO. 56 OF 2004

**EQUITY AGENCIES LTD.....APPLICANT
VERSUS**

1. TANZANIA COTTON LINT AND}	}
SEED BOARD	}
2. P.S.R.C.	}....RESPONDENTS

RULING

Oriyo, J

The applicant, through the services of MKALI AND CO, ADVOCATES filed an application for leave to sue first respondent, which is a specified corporation. He also prayed for leave to join PSRC as a necessary party. Before I proceed further, let me state here that the second prayer for leave to join PSRC is unnecessary because there is no legal requirement for leave to join PSRC in proceedings where a specified corporation is a party. Parties are at liberty to do so. On that account the second prayer is rejected outrightly. So remained the application for leave to sue the first respondent.

The respondents, through the services of LUTEMA AND COMPANY ADVOCATES objected to the application and raised two points of preliminary objection in law that:-

- (i) The matter is res judicata
- (ii) The court has no jurisdiction

Parties were ordered to argue the points of preliminary objection through written submissions according to a certain schedule. The respondents submissions were duly filed but the applicant has to date not filed any. In addition to failure to comply with court order to file submission; the applicant and Mr. Mkali advocate have defaulted court appearance without any explanation. I take Mr. Mkali's conduct contemptuous of the court. He should be called upon to explain why disciplinary action should not be taken against him. Therefore the preliminary points of objection by the respondents stand unopposed. This court has held in a number of decisions that failure to file written submissions is tantamount to non-appearance at a hearing or want of prosecution.

On the merits of the preliminary objection; there is no dispute that this court has no jurisdiction over the subject matter of dispute. Pursuant to the coming into operation of the Land Division of the High Court on 1 October 2003; disputes over landed property are vested in the exclusive jurisdiction of the Land Division; pursuant to the provisions

of the Land Act No. 4/99 and the Courts (Land Disputes Settlement) Act No. 2/02. The second point of preliminary objection is upheld. The matter is incompetently before the court and is struck out with costs.

Having held that this court has no jurisdiction over the intended dispute it will be unnecessary to consider the first preliminary objection that the matter is resjudicata

It is so ordered

K.K. ORIYO

JUDGE

2/11/2005