

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA

LAND REFERENCE NO. 7 OF 2019

(From the Decision of Taxing Master in Bill of Cost No.2/2019, Land Reference No.2/2017, Bill of Cost No.13/2016, High Court Misc Land Appl. No.1/2014; District Land & Housing Tribunal of Rungwe in Land application No.26/2013, Original Land Case No.33/2012 Kiwira Ward Tribunal)

JUMA SANGA APPELLANT

VERSUS

MATRIDA SANNSUPARESPONDENT

RULING

Date of last Order: 11.06.2020

Date of Ruling: 18.06.2020

DR. A. J. MAMBI, J.

This ruling emanates from the preliminary objection raised by the respondent on the application filed by the applicant. Earlier the applicant filed his reference in Land Reference No. 7 of 2019 against the decision of the Taxing Master on Bill of cost No.13 of 2016. Before the matter proceeded further, the respondent through the learned State Attorney Mr. Mwakolo Junior raised a preliminary objection that the reference filed by the applicant is fatally defective.

During hearing the respondent was represented by the learned Counsel Mr. Amani Mwakolo while the appellant appeared unrepresented. In his submission the respondent Counsel briefly submitted that the appellant has not properly moved this court for wrong citation of the provision of the law. He prayed the application be struck out.

In response, the appellant briefly submitted that he does not agree with the preliminary objection since it has no merit. He contended that the provisions of the Constitution under Articles 13(a) to (6), 26 and 107 are clear. He argued that the argument the respondent Counsel is misconceived as he is misleading and wasting time of the court.

In his rejoinder, the respondent Counsel submitted that the appellant has not responded to the preliminary objection apart from just citing the irrelevant Articles of the Constitution.

I have keenly gone through and considered the points of preliminary objections raised by the respondent in line with the reply by the appellant. The main issues in my considered view are whether this court has been properly moved and whether the matter has been prematurely brought before this court. While the respondent has argued that the chamber application was wrongly filed basing on wrong provisions of the law, the applicant has mainly relied on the Articles of the Constitution to justify his argument. He just argued that Articles 13 (1)-(6), 26 and 107 of the Constitution of the United Republic are clear. I have not seen the

relevance of the Articles of the Constitution cited by the applicant since the applicant was required to respond on the points of preliminary objection. Indeed the main point of the respondent preliminary objection was based on the citation of the wrong provisions of the law by the applicant. I have gone through the application supported by the affidavit, and observed that the applicant has cited wrong provision of the Law. The application in his first paragraph of chamber application states as follows:

***“(Made under rule 7 (1) and (2) of the advocates
Remuneration order of 2015 GN 24”***

Looking at the above paragraph, the application at hand cannot be brought under such provision of law. The applicant was required to cite the proper **Order** followed by the proper Rule of the Advocates Order, 2015 GN.No.264/205. This means the citation should start with the relevant Order followed by the Rule and this in my view is the mandatory requirement of the law. Failure to do so renders the application defective and invalid. I don't see if the irrelevant articles of the constitution relied by the applicant cannot help him in his omission of improperly citing the provisions of the law. Indeed the provisions or Articles of the Constitution cannot be misused as a shield for parties to cloth their mistakes of not complying with the necessary legal requirements.

Having found that the applicant wrongly filed his application to this court, the only remaining question before me will now be, whether there is any application before this court. In my considered view, since the applicant did not comply with the mandatory

requirements of the law, it is as good as saying there is no application in this court. Failure to cite the proper provisions of the law makes such application incompetent, and I hold so.

I wish to refer the decision of the court in ***The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others*** Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

“this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings.”

Reference can also be made to the decision of the court of Appeal of Tanzania in ***Joseph Ntongwisangue another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005*** (unreported) where it was held that:

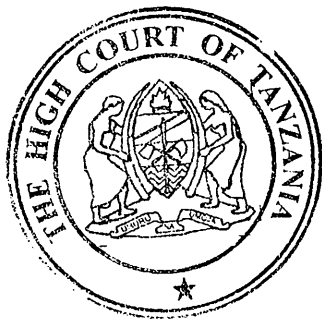
“... Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court.

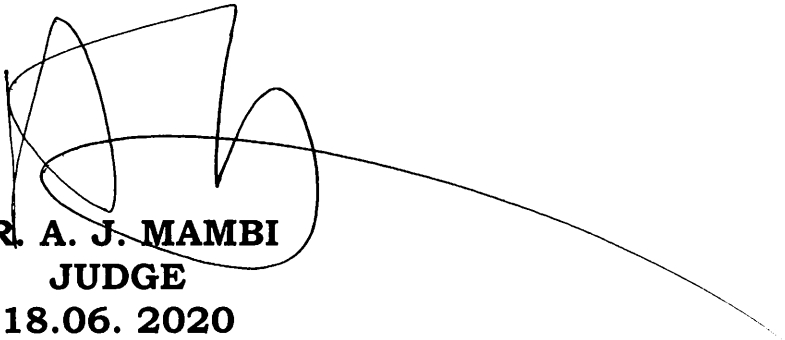
From what I have observed, I am constrained to hold that the matter (application) before this court is fatally incompetent. From the reasons stated above, I am of the settled view that the matter before this court is incompetent.

In the circumstances, the preliminary objection raised by the respondent is sustained and upheld which means that the intended

application is struck out on the reasons I stated above. For reasons I have given above, I am of the settled view that since the application before me is incompetent, what then follows is to strike it and I hereby struck out this application for being incompetent.

I feel it is requisite however, to advise the applicant that if he wishes to further pursue his right, he is at liberty to file application subject to the law of limitation. Considering the circumstance of the case, I make no order as to costs.




DR. A. J. MAMBI
JUDGE
18.06. 2020

Date: 18/06/2020

Coram: N. W. Mwakatobe - DR

Applicant: Present

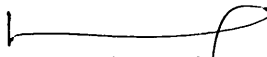
Respondent: Absent

For the Respondent:

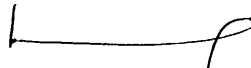
B/C: Gaudensia

Court: Ruling is delivered this 18th day of June, 2020 in the presence of applicant and in absence of Respondent.




N. W. Mwakatobe
Deputy Registrar
18/06/2020

Court: Right to appeal is explained.


N. W. Mwakatobe
Deputy Registrar
18/06/2020