

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 638 OF 2019

(Originating from Civil Appeal No. 207 of 2019)

SALUM MAHAMED ----- 1ST APPLICANT

KHALID MOHAMED ----- 2ND APPLICANT

VERSUS

MAHADI HADI ----- RESPONDENT

RULING

Date of Last order: 11.02.2020

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Ebrahim, J.:

When served with the application under Certificate of Urgency to restrain the respondent to dispose of the building; counsel for the respondent entered appearance and raised two points of objections.

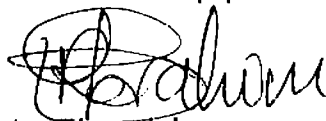
By leave of the court parties proceeded to argue the same. The respondent raised objection that the application has been brought under the wrong provision of the law as

the cited **Section 32B(ii) of the MCA, Cap. 11** caters for Criminal Matters. More- so there is **no S. 32B(ii) in Cap. 11**.

He also pointed out anomalies in the affidavit supporting chamber summons that the deponent has not stated the date and place of verification contrary **to Order 6 Rule 15 (3) of the Civil Procedure Code**. Also the affidavit is based on speculation and allegations.

Counsel for the applicants conceded to the defects on citation and decided not to address the second limb on the quest to save court's time. He prayed that costs be waived. Counsel for the respondent insisted on the costs.

Indeed, there is no such **S. 32B(ii) in the MCA**. Nevertheless, as for the issue of cost, I find that the respondent has already engaged a lawyer to defend the same and eventually raised points of objection which was conceded by the counsel for the applicant. It is on that back- ground that I struck-out the application with costs.



R. A. Ebrahim

JUDGE

11/02/2020