

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

MISCL. CIVIL APPLICATION NO. 470 OF 2017

(Originating from Misl. Civil Application no. 74 of 2017)

MSAE INVESTMENT CO. LTD APPLICANT

VERSUS

**ELIUS A. MWAKALINGA..... 1ST RESPONDENT
SCHOLASTICA CHRISTINA KEVELA.....2ND RESPONDENT
THE COMMISSIONER FOR LANDS.....3RD RESPONDENT
THE REGISTRAR OF TITLES.....4TH RESPONDENT
TANZANIA BUILDING AGENCY.....5TH RESPONDENT
THE HON. ATTORNEY GENERAL.....6TH RESPONDENT**

Date of last Order: 24/02/2020

Date of Ruling: 26/02/2020

R U L I N G

MGONYA, J.

Before me is an Application by way of Chamber Summons. It is supported by an Affidavit sworn by MR. **WILBARD MTENGA**, the Applicant's Managing Director.

The same is laid under Section 5 of the Judicature and Application of **Laws Act Cap. 358 [R. E. 2002]**, Order **XXXVII Rule 2 (2)** and **Section 68 (c) of the Civil Procedure Code Cap. 33 [R. E. 2002]**.

In this Application, Mr. Alex M. Balomi learned Counsel appeared for the Applicant while Mr. Daniel Nyachia, learned

State Attorney represented all the Respondents serve for the second Respondent who is represented by Samuel Shadrack Ntabaliba.

In this Application essentially the Court is being moved for an Order that:

"This Honorable Court be pleased to call the 1st and 2nd Respondents to show cause as to why they should not be committed into Civil Prison for contempt of this court's order dated 24th February 2017."

When the matter came up for hearing, Ms. Mseti the learned State Attorney prayed the Court to allow the Parties argue the Application by way of Written Submissions. Other parties' Counsel raised no objection. Accordingly, I granted the Counsel prayer and fix a schedule in that respect which has been accordingly adhered too hence this ruling.

Referring to the Applicant's submission, it is the Applicant's counsel assertion that this very Honorable court on the 24th day of February, 2017 granted an order to maintain ***status quo*** at the Applicant's premises, but in serious contempt the 1st and 2nd Respondents chose to abuse and disrespect the said order and they proceeded to conduct eviction of the Applicant from the suit premises designated as **Plot No. 2466/208, Dar es Salaam.**

It is the Counsel's contention that in respect to the status at hand and in respect of the property mentioned above, the same arose from the decision in **Misc. Civil Application No. 25 of 2007**, where this Court compelled the Registrar of Titles and Commissioner for Lands to sign a **Certificate of Title No. 2466/208** of which remains to date. Further to that, the 1st Respondent is just a third party to that order and an order cannot be enforced against him.

As to the fact that the 1st Respondent cannot be held in contempt against an order which was not made against him as no breach was in response to the 1st Respondent, Mr. Nyachia referred this court to the case of ***OYSTERBAY PROPERTIES LIMITED AND KAHAMA MINING CORPORATION VERSUS KINONDONI MUNICIPAL COUNCIL, COMMISSIONER FOR LANDS AND ATTORNEY GENERAL Civil Revision No. 4 of 2011, (Unreported)*** where the court observed that where the third parties were not party to the suit or judgment debtors and that, the decree could not be enforced against them.

From the same, it is Mr. Nyachia's contention that the 1st Respondent has not breached any status of the order neither before nor after the order has been issued. The Applicant has smutted to the effect that the 1st Respondent be held in contempt but have not indicated as to what extent the Applicant has

breached the order of the court, in **Application No. 74 of 2017** in respect to injunction orders application which has not been determined to date; as such no any injunction has been issued against the Respondents.

From that apprehension, it is the Counsel's view that under those circumstances, the 1st Applicant cannot be held in contempt form for an order which he has not breached. Further it is the counsel's concern that before the order was issued, the Applicant had obtained a mandamus order against Commissioner for Lands and Registrar of Titles and not against the 1st Respondent.

In conclusion, it is the learned State Attorney's considered opinion that the 1st Respondent has not breached any order in respect to what the Applicant is alleging, and from the same, it is his prayer that the Application before the court be dismissed with costs.

The 2nd Respondent's Counsel submitting and objecting to the Applicant's submission, parties stated that the parties in **Misc. Civil Application No. 74/2017** were **Msae Investment Co. Ltd Vs. The Commissioner for Lands, the Registrar of Titles, Tanzania, Building Agency and the Honorable Attorney General**, and that the second Respondent was not a party to the said proceedings. It is further alleged by the 2nd Respondent that, under those circumstances where the second

Respondent was not a party, she cannot be condemned for the order which does not cover her in any way.

Further, it is the 2nd Respondent's concern that, there is no any proof to the effect that she was served with the maintenance of the *status quo* order and refused as stated in paragraph 7 of the Applicant's Affidavit in respect of the instant Application.

It is from the above argument, the 2nd Respondent's Counsel is of the opinion that the Applicant has misconceived the 2nd Respondent's her engagement in this matter and therefore prays the court to dismiss the Application for being devoid of merit.

Before I venture to determine the merits or otherwise of the present Application, I feel duty bound to make an observation and register the position of law in respect of proceeding of this nature.

To start with, I am mindful that the court orders are made with a purpose to regulate proceedings and of course they must be adhered to. If parties are to act in total disregard to those orders, then the court business will be rendered uncertain and will not be useful for effective administration of justice.

My learned brother Luanda, J. as (he then was) in the case of ***T.B.L VS EDSON DHOBE & OTHERS Misc. Civil***

Application No. 96 of 2006 propounded the following sentiment:-

"Court order should be respected and complied with; court should not condone such failure. To do so is to set a bad precedent and chaos. This should not be allowed to occur. Always court should exercise firm control over proceedings."

In the light of the above, the question is whether there was a court order alleged to be disobeyed by the Respondents herein.

In the course of determining the instant matter, I was able to find and refer to the file in respect of **Miscellaneous Civil Application No. 74 of 2017** where the said order of maintenance of the *status quo* emanates. The record of the same further reveals that the parties therein were **Msae Investment Co. Ltd Vs. The Commissioner for Lands** as the 1st Respondent, **the Registrar of Titles** as the 2nd Respondent, **Tanzania Building Agency** as the 3rd Respondent and the **Honorable Attorney General** as the 4th Respondent.

Further, the record of the said matter reveals that on 24th February 2017, Hon. Judge Dyansobera upon the prayer by the Applicant in person on the injunctive order, Hon. Judge granted the prayer in the following words of which both the prayer and the order thereto deserve to be quoted:

"Mr. Wilbard E. Mtenga:

The Respondents seek to conduct execution. We pray for injunction pending hearing of the main application.

Order:

Upon the application filed under a certificate of urgency, and since the respondents are not yet served, the matter is set for hearing inter parties on 3/3/2017.

Meanwhile, a status quo to be maintained till then.

Respondents to be notified.

(Signed. J.)

24/2/2017"

The content of the above order specifies the duration of the same **to be until then**, meaning on the date of hearing of the parties' interparty and not otherwise. This is evidenced by the wording of the Applicant himself when the court resumed its proceedings on 3/3/2017 where he confirmed by saying that the order was to stay up to the said day. Further however, and surprisingly to the Applicant, the Respondents on Wednesday sent Auction Mart to enter and damage some properties in his premises which the order was in respect of the same.

Looking further at the instant Application's pleadings and submission, I have failed to locate the exact date in which the Respondents herein are said to disobey the court order by evading the Applicant's premises and evict him. The only date in the record which is clearly stated is **27th February 2017** where the Applicant is said to have served the 5th and the 6th Respondents with the order for maintenance of the *status quo* as well stated in paragraph 5 of the Applicant's Affidavit in this Application.

It is my firm view that in the absence of the exact date of the breach of the court order, I cannot proceed to determine the serious matter before the court. It is the duty of the Applicant to disclose the entire facts which could equip the court to determine the matter before it. Assumption in court is the most dangerous creature of which may defeat ones rights.

In determining this matter too I cannot deny the fact that the 1st and 2nd Respondents herein were not party to the originating application which the maintenance of the *status quo* was granted. If at all the order was served, the same has been clearly said to have been served to the 5th and 6th Respondents hereto who were the 3rd and 4th Respondents in **Misc. Civil Application No. 74 Of 2017**. Apart from the fact that the 1st and 2nd Respondents herein were not part of the Application,

from the Applicant's facts they were not served. Even if they had anything to do with the Applicant's premises, the question here comes, how were they supposed to know about the order of the maintenance of the *status quo* granted on the 24th February 2017, while they were neither parties to the Application nor they were served with that order.

From the same, it is my firm concern that the Applicant in this Application has sued the wrong parties. Now, in law, what is the effect of suing a wrong party? The consequences of an application bearing a wrong or rather a non-existent Respondent has been referred in the decision of the Court of Appeal in the case of ***TOSI JATEGI V. TANZANIA HABOURS AUTHORITY, Civil Application No. 164 of 2006 (Unreported)*** where it was held that:

"The general principle of the law directs that, it is essential for the names of the parties either in a suit or in an application to be clearly stated. This is because such mistake in the names of the parties may be fatal and bring about some confusion. Hence an application bearing a non-existent respondent as in this case, may lead to fatal consequences because if the Applicant wins, an order of the court might not be executable to such a non-existing party."

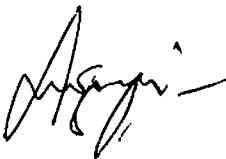
I have no doubt in my mind that, from the record of this matter, the 1st and 2nd Respondents were not parties to the preceded proceedings of **Misc. Civil Application No. 74 Of 2017**. In the event therefore, and for the above state reason, the 1st and 2nd Respondents cannot be held responsible of court contempt as it is alleged by the Applicant who is also aware that even though they were not the parties to the said proceedings, they were not aware of any order since they were not served in a first place.

Now, since it is the Applicant prayer that this Honorable Court be pleased to call the 1st and 2nd Respondents to show cause as to why they should not be committed into Civil Prison for contempt of this court's order dated 24th February 2017, under the above explanation, **the prayer cannot stand, hence denied for it being meritless.**

In the event therefore, I proceed to dismiss the entire Application. I make no order as to costs.

It is so ordered.




L. E. MGONYA
JUDGE
26/02/2020

Court: Ruling delivered before Hon. J. E. Fovo, Deputy Registrar in chambers in the presence of Mr. Mtenga, Advocate for the Applicant, Mr. Masayamba, for the 1st, 3rd, 4th, 5th, and 6th Respondent, Mr. Mtui, Advocate for the 2nd Respondent and Ms. Janet RMA, this 26th day of February, 2020.



L. E. MGONYA
JUDGE
26/02/2020

