

**IN THE HIGH COURT OF TANZANIA
AT BUKOBA
LAND CASE APPLICATION NO.43/2018**

*(Arising from Land Appeal No.11/2015 HC and DLHT Bukoba
Land Application No.66/2014)*

ROBERT STEPHANOAPPLICANT

VERSUS

VEDASTINA ARCHARD MSIKARESPONDENT

18th -24th February, 2020

RULING

BAHATI, J

This ruling is in respect of a preliminary objection (PO) which has been raised by the respondent against the application for restoration of the dismissed applicant's appeal. The application has been preferred under section 43(1) and (2) of Act No.2/2002 R.E 2003.

In objecting the application, the respondent has lodged two grounds of the PO vide a notice which was filed on the 5th November, 2018, namely,

- i. This application is incompetent and bad in law for failure to move properly the court by citing proper and enabling provisions in the Chamber Summons;(sic)*
- ii. This court is not clothed with jurisdiction to entertain the matter.(sic)*

At the hearing of the PO, the applicant was unrepresented, whereas the respondent had the representation of Ms. Pilly Hussein, learned counsel. As it has been the practice of the Court, before I could deal with the application, I had to dispose of the preliminary objection raised first. I therefore invited the learned counsel for the respondent and applicant to address the Court on the PO.

In support of the raised preliminary objection, the learned counsel, Ms. Pilly Hussein requested the court to consolidate the first and second grounds accordingly. Consequently, the learned counsel submitted that, this application is incompetent and bad in law for failure to move the court by citing proper and enabling provisions in the Chamber Summons. Ms. Pilly Hussein submitted further that, in the Chamber Summons, the applicant has cited section 43(1) (2) of Act No. 2/2002 Revised Edition 2003 as enabling provisions of moving the Court in an application for restoration of the dismissed appeal. According to her, the applicant has quoted the wrong provisions. She thus submitted that this Court is not properly moved under this section. It was

her further submission that even if the applicant's intention was to cite section 43(1) and (2) of the Land Disputes Act, 2002 such provisions do not move the court to determine the envisaged application.

In amplifying this statement she referred the Court to the case of **Salum Nhumbili V R (Mwanza Criminal Application No. 04 of 2013)** at pg. 3 where the Court of Appeal held that;

*"The rule demands the specific rule under which the application is brought to be cited in the Notice of Motion. The rationale for this rule is to enable the court to ascertain whether it is properly moved and whether it is clothed with the jurisdiction to do the thing sought. Now, it is trite law that failure to cite an enabling provision, or a wrong citation thereof, renders any such application incompetent (see **Anthony Tesha V Anitha Tesha** , Civil Appeal No. 10 of 2003(AR)(unreported)."*

The counsel for respondent, Ms. Pilly Hussein further submitted that according to the above cited case, this application is incompetent and is subject to be struck out.

In addition to that, the counsel for respondent cited the case of **Emilian Matojo v Purcheria Paulo, (Misc. Land Application No.62 of 2017)** at pg 6. In this case, the applicant relied on a wrong citation and Dyansobera J, held that;

"It is settled that a wrong citation of the law renders the application incompetent."

To amplify her argument further, the learned Counsel for the respondent invited the Court to refer to the case of **Said Ally Ismail V Republic, (Criminal Application No.3 of 2010)** at pg 5, where the Court held that,

"It is the citation of the relevant law which gives the court jurisdiction to grant the relief or order sought. Failure to do so is as fatal omission and/or irregularity which render the application incompetent."

In view of the foregoing submissions, the learned counsel prayed to this Court that this application be struck out for want of citation of proper provision of the law.

On his part the applicant, Mr. Robert Stephano submitted that the matter is properly before this Court. He requested the court to proceed and adjudicate it.

Upon considering the submissions by both parties, I agree with the counsel for the respondent that the applicant has not properly moved the Court by citing bad law. Admittedly, by so doing the Court lacks the basis upon which to determine the application. The applicant should have cited the proper and enabling provision in the chamber summons.

As correctly submitted by the counsel for the respondent, it is a settled principle of law that in every application, the applicant must cite the proper law and provision upon which he is moving the Court to determine the matter before it. The law in this regard has been kept in motion by the Court of Appeal of Tanzania in several cases such as **Almas Iddie Mwinyi Vs NBC & Mrs Ngeme Mbita**, Civil Application No. 88/1998 (CA)

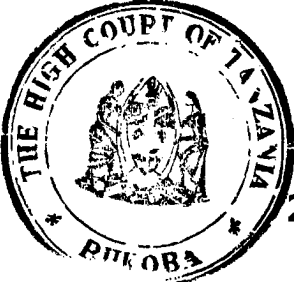
(Unreported); **N.B.C Vs Sandrudin Meghji**, Civil Application No. 20/1997(CA) (Unreported); **Aloyce Mselle v The Consolidated Holding Corporation**, Civil Appeal No. 11/2002 (CA) (Unreported); **NBC (1997) Ltd Vs Thomas K. Chacha t/a Ibora Timber Supply (T) Ltd**, MZA Civil Application No. 3/2000(CA) (Unreported); **Rukwa Autoparts Ltd v. Jesina G. Mwakyoma**, Civil Application No. 45/2000 (CA) (Unreported), just to name but a few.

The rationale behind citing proper provisions of the law upon which the application is made is to properly move the court for the orders sought. Short of such compliance, the Court is not properly moved. Consequently, not only that the court cannot grant orders sought but also the application is incurably defective. Therefore, the respondent has strictly proved the raised PO.

Since this Court was not properly moved by the applicant's wrong citation of the enabling provisions in the chamber summons, the application is incompetent. I accordingly sustain the preliminary objection and the application stands struck out with costs.

It is so ordered.

Right of appeal explained.

The seal of the High Court of Tanzania is circular, featuring a central emblem with a lion and a shield, surrounded by the text "THE HIGH COURT OF TANZANIA" and "RIKOBWA" at the bottom.
A.A. Bahati
A.A. BAHATI
JUDGE
24/02/2020

Ruling delivered in open chambers in the presence of the Applicant in person and the respondent's Advocate Ms. Pilly Hussein 24th Day of February 2020.

A.A. Bahati

A.A. BAHATI

JUDGE

24/02/2020

