

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(IN THE DISTRICT REGISTRY OF BUKOBA)**  
**AT BUKOBA**

**MISC. LAND APPLICATION NO. 8 OF 2018**

*(Arising from the High Court (Bukoba Registry) in Land Appeal No. 25 of 2015 and  
Land and Housing Tribunal for Kagera at Bukoba in Application No. 37 of 2008)*

**BENEDICTO ICHULANGULA ----- APPLICANT**

Versus

**JOHANES MUTAYOBA & ANOTHER ----- RESPONDENTS**

**RULING**

19/10/2020 & 30/10/2020  
**Mtulya, J.:**

This is an omnibus application for extension of time to file notice and leave to prefer an appeal before the final court of appeal, the Court of Appeal to protest the judgment of this court in Land Appeal No. 25 of 2015 between the parties delivered on 24<sup>th</sup> February 2017.

However, the application faced with a notice of preliminary objection on point of law contained four (4) grounds; *viz*: the application was filed without leave to refile vide Misc. Land Case Application No. 22 of 2017; the Chamber Application is wrong; the application does not disclose the grounds intended for appeal purposes; and finally, the *Jurat* is not properly attested.

When the objection was scheduled for hearing, parties agreed to argue the objection by way of written submission. With the first

ground of the objection, the Respondent argued that in Land Application No. 22 of 2017 before this court the Applicant withdrew the Application after the Respondents had filed their written submission and therefore the Applicant pre-empted the objection as per decisions in **Kinondoni Municipal Council v. Alphonse Buhatwa**, Civil Application No. 150 of 2007 and **Job Mlama & Two Others v. Republic**, Criminal Application No. 18 of 2018. To the Respondents, the present Application is *res judicata* as it was withdrawn before determination.

Replying the second objection, the Applicant stated that it was the court order of 4<sup>th</sup> December 2017 which allowed the Applicant to withdraw his application as per Order VI Rule 17 of the **Civil Procedure Code** [Cap. 33 R. E. 2002] (the Code). To my opinion, this objection has no merit and cannot detain this court. The principle of *res judicata* is invited when the case or application is determined to its finality on the subject matter which is directly or substantially the same between the same parties. The application in Misc. Land Case Application No. 22 of 2017 was withdrawn by this court at the request of the Applicant and cannot be said it pre-empted the objection. As the objection was not determined to the finality, its legal basis cannot be deliberated in this Application.

The Respondent in second limb had two grounds of objection, viz: first, the Applicant titled his Application as: **In the High Court of Tanzania, Application No. 8 of 2018**, which is contrary to article 108 (1) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R. E. 2002] (the Constitution); and second, that the Application does not originate from this court in Land Appeal No. 25 of 2015 and **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Land Application No. 37 of 2008**.

The Applicant in the first part of the objection in this limb, stated that the Constitution does not provide for format in drafting pleadings and that the Respondent did not cite any precedent to substantiate his claim. In any case, the Applicant argued that the objection relates to the format instead of the substance and may not invite dismissal or struck out order. According to the Applicant, in such cases, the proper remedy is to allow amendment of the pleadings as per precedents in the **Registered Trustees, Archdiocese of Dar Es Salaam v. Adelimarsi Kamili Mosha**, Misc. Land Application No. 32 of 2019 and **Meliyo Logilieki v. Longidare Menawe & Three Others**, Misc. Civil Application No. 81 of 2015. To the Applicant, this court may

allow him to amend the pleadings to reflect the proper name of the court.

On my part with regard to the first part of the objection in second limb, I do not see that defect in the Chamber Summons. Even if it was, the precedent set by this court in **Trustees, Archdiocese of Dar Es Salaam v. Adelimarsi Kamili Mosha** (supra) is certain and settled, especially after enactment of section 3A in the Code. This court at page 9 of the Ruling, stated that:

*...it was not proper for the Applicant to title IN THE HIGH COURT OF TANZANIA. However, this is a matter of form which has nothing to do with the substance of the matter...the remedy is neither to struck out nor dismiss the application. The proper remedy is to allow amendment by inserting the missing words.*

I need not to add any words from the above quotation. With the second part of the complaint in the second limb, I have perused the record of this Application and found out that the Applicant in his Chamber Summons stated of Land Appeal No. 25 of 2015 of this court and Land Application No. 37 of 2008 in the Tribunal whereas the attached decision was Misc. Land Case Application No. 22 of 2017 of this court. The two printed decisions in the Chamber Summons

were not attached in the Application. It is unfortunate in his reply, the Applicant declined to state anything on this complaint and no reasons were registered on such failure. This is a fault in the application.

Having noted that the application has defect in wrong citation or attachment of necessary documents which makes the application incompetent, and may call for struck out or dismissal order, this court may not proceed with academic exercise of determining the last two grounds of preliminary objection on *Jurat* and grounds of appeal.

In the final analysis, I think this application must be dismissed for the sake of end of justice. This dispute has been in this court since 23th June 2015 and was filed in the Tribunal in 2008. It is more than twelve (12) years now since it knocked the doors of legal apparatuses of settling land disputes. In this court, it is the third time. In the second time in Misc. Land Case Application No. 22 of 2017, the Applicant prayed withdraw of the Application when the Respondents had already filed their submissions on the preliminary objection. The prayer was granted. In the present application, another defect is spotted.

Precedents available in this court and our superior court show that applications of this nature must have an end to allow parties to

engage in other economic activities (see: **Zambia Tanzania Railway Authority v. Halikans & Another** (1979) LRT 21; **General Manager KCU (1990) Ltd v. Theobald Kainani**, Civil Application No. 9 of 2005; **Angella Amudo v. The Secretary General of E.A.C.**, Civil Application No. 4 of 2015; **Ezekiel Kapugi v. Abdallah Mombasa** Civil Application No. 135 of 2016; and **Wilfred Teikwa v. Deogratias Chrisostom**, Misc. Land Case Application No. 106 of 2016. For instance, in the precedent of **General Manager KCU (1990) Ltd v. Theobald Kainani** (supra), the Court of Appeal stated that:

*Applicant filed the notice of appeal... as the applicant did not take necessary steps, the same was struck out...without objection. It would appear the applicant is trying to have another bite. With due respect to do that is nothing than abuse of the court processes. **There will be no an end to civil litigation if courts of law will entertain such applications.** There should be an end to any civil litigation, hence the Latin Maxim – interest reipublicae ut fit finis litium.*

(Emphasis supplied)

If the present application is struck out, it will be entertaining unnecessary applications originated from the same case filed 2008 before the Tribunal and has been in this court five years now. Surely, it costs time and resources of this court and hinders the parties to enjoy their rights and concentrate in other economic activities. I therefore, dismiss this application with costs.

Ordered accordingly.



  
F. H. Mtulya

**Judge**

30/10/2020

This Ruling was delivered in Chambers under the seal of this court in the absence of the parties.



  
F. H. Mtulya

**Judge**

30/10/2020