

IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISCELLANEOUS LAND CASE APPLICATION No. 14 OF 2019

(From the Decision of the District Land and Housing Tribunal for
Tabora in Land Case Application No. 49 of 2014)

DAVID SAMSON BUTEMBAAPPLICANT

VERSUS

COSTANTINE COSMAS KIHALIYERESPONDENT

RULING

Date of Submission: 24/11/2020

Date of Delivery: 24/11/2020

AMOUR S. KHAMIS, J.:

David Samson Butemba was the second respondent in Land Application No. 49/2014 instituted by Constantine Cosmas Kihaliye in the District Land and Housing Tribunal for Tabora.

Other respondents in that Case were the National Microfinance Bank PLC, Tanzania Postal Bank Branch and Nsoma Auction Mart & Company Ltd who are not parties to the present proceedings.

Aggrieved by the tribunal's decision dated 3/05/2016, the applicant filed the present application for extension of time to appeal to this Court.

The application was made by way of Chamber Summons under Section 38 (1) of the Land Disputes Courts Act No. 2/2002 and Section 14 (1) of the Law of Limitation Act, Cap. 89, R.E. 2002.

The affidavit of David Samson Butemba supported the application.

When the application came for hearing, the respondent defaulted appearance and hearing proceeded *ex parte*.

Upon reading the application, I noticed that a wrong provision of the law was cited by the applicant in the Chamber Summons.

The applicant cited Section 38 (1) of **THE LAND DISPUTES COURTS ACT CAP. 216, R.E. 2019** in moving the Court for extension of time.

However that provision deals with appeals on matters originating from the Ward Tribunal.

This is to mean that the Section is applicable where the District Land and Housing Tribunal exercises its appellate or revisional jurisdiction on matters that started in the ward tribunal.

In the present case, the applicant is aggrieved by a decision of the District Land and Housing Tribunal in its original jurisdiction.

The procedure for appeals in respect of the latter category of appeals is provided for in Section 41 (1) and (2) of the **LAND DISPUTES COURTS ACT** (*supra*).

In **RAJABU DENDEGO V KAMBAGA VILLAGE COUNCIL, HIGH COURT OF TANZANIA, LAND DIVISION AT DAR ES SALAAM,**

MISC. LAND APPLICATION NO. 15B OF 2009 (unreported) it was held that:

"It is settled law that wrong citation or non-citation of the proper provisions of the law renders the application incompetent and should be struck out."

On account of the above persuasive decision of this Court, I am inclined to strike out the present application with no order for costs. It is so ordered.

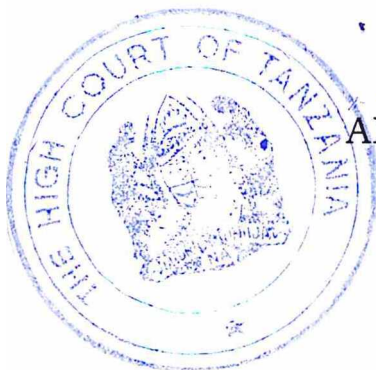


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AMOUR S. KHAMIS
JUDGE
24/11/2020

ORDER:

Ruling delivered in open Court in presence of the applicant in person and in absence of the respondent. Right of appeal explained.



A handwritten signature in blue ink, appearing to read "Amour S. Khamis", with a stylized flourish at the end.

AMOUR S. KHAMIS
JUDGE
24/11/2020