

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
BUKOB A DISTRICT REGISTRY
AT BUKOB A

MISC. LAND APPLICATION NO. 26 OF 2021

(Arising from Mbuba Ward Tribunal Case No. (NOT NUMBERED) of 2017, Ngara District Land and Housing Tribunal, Land Appeal No. 6 of 2018 and High Court Land Appeal No. 28 of 2019)

JULIAN PASTORY RUBAVU.....APPLICANT

VERSUS

JUMA CHALUKWAYA RESPONDENT

RULING

13/07/2021& 15/07/2021

NGIGWANA, J

The applicant has filed this application by way of chamber summons made under section 47 (2) and (3) of the Land Disputes Courts Act Cap 216 R: E 2019. The chamber summons is supported by an affidavit of Ally Chamani, learned advocate who was representing the applicant. The applicant was seeking for orders as follows;

- (a) Certification that there are points of law involved in the appeal
- (b) Application to appeal to the Court of Appeal

(c) Any other and further relief this court may deem just to grant

A brief back ground of this matter is to the effect that the applicant was aggrieved by the decision of Ngara District Land and Housing Tribunal in Civil Appeal No. 6 of 2018 arising from Mbuba Ward Tribunal. She then preferred an appeal in this court, Miscellaneous Land Appeal No. 28 of 2019 challenging the decision of DLHT. The same was dismissed with costs by this court on 05/03/2021 for want of merit, hence this application

Upon being served with the chamber summons and respective affidavit, the respondent through his advocate Mr. Dickson Laurent filed a counter affidavit together with a notice of preliminary objection.

The preliminary objection reads;

The applicant's application is bad for being preferred against the wrong party.

When the matter was called on for hearing, the applicant was represented by Mr. Phahad Rwamayanga, learned counsel while

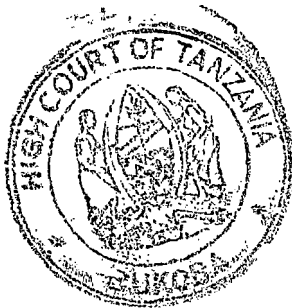
the respondent was represented by Dickson Laurent, learned counsel.

Expounding the preliminary point of objection Mr. Laurent submitted that this application arises from the decision of Mbuba Ward Tribunal in which appeal was filed in Ngara District Land and Housing Tribunal, Land Appeal No.6/2018 and finally to this Court, Land Appeal No.28/2019 whereas in the pleadings and judgments thereto, the respondent was known by the name of **JUMA ILDELPHPONCE ODAS CHALUKWAYA** and not **JUMA CHALUKWAYA** as it appears in this application. He further submitted that; on that ground the application was preferred against a wrong party, and if this court allows certification in such a situation, there will be no competent appeal in the Court of Appeal. He added that, under the circumstance, the only available remedy is to struck out the application. He ended his submission urging the court to struck out the application with costs.

In respond thereto, Mr. Phahad for the applicant conceded with the preliminary objection raised by the respondent and prayed for court to strike out the application with no costs.

Following the decision of the learned counsel for the applicant to concede to the preliminary objection that the application was preferred against a wrong party, I hereby struck out the Application. It has to be noted that where the applicant has shown readiness to concede to the preliminary objection, the court may not condemn him/her to pay costs. See **Ally Chamani & Another versus Tanzania Bulding Agency &Another**, Land case No.47 of 2019 CAT at Bukoba (Unreported). In our case, I choose not to condemn the applicant to pay costs because of readily conceding to the preliminary point of objection.

It is so ordered




E. L. NGIGWANA

JUDGE

15/07/2021

Date: 15/7/2021

Coram: Hon. Emmanuel Ngigwana, J.

Applicant: Absent

Defendant: Present & represented by Dickson Laurent

B/C: Gosbert Rugaika

Mr. Dickson Laurent:

My Lord, the case is coming for ruling. I am also holding brief for Mr. Phahad Rwamayanga, learned counsel for the Applicant who is absent. We are ready to receive the ruling.

Court: Ruling delivered this 15th day of July, 2021 in the presence of the Respondent and his Advocate Mr. Dickson Laurent who is also holding brief for Mr. Phahad Rwamayanga, learned Advocate for the Applicant who is absent.



E. L. Ngigwana

JUDGE

15/7/2021