

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA  
AT ARUSHA**

**MISC. LAND APPLICATION NO. 86 OF 2022**

*(C/f Land Case No. 34 of 2022)*

**ZADOCK ENOCK KOOLA.....APPLICANT**

**VERSUS**

**MARTIN RAYMOND MACHA.....1<sup>ST</sup> RESPONDENT**

**PETER HANS GERHARD KOCH .....2<sup>ND</sup> RESPONDENT**

**DULUTI COFFEE ESTATES LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

01/08/2022 & 01/08/2022

**KAMUZORA, J.**

This application was brought under Order XXXVII Rule 1 (a) and 4, section 68(e) and section 95 of the Civil Procedure Code, Cap 33 RE 2019. The Applicant is praying for orders of temporary injunction restraining the Respondents or their employees, agents or any other person working under their instructions from interfering the disputed land described as 7 acres designated as Farm No. 98/3 situated at Meru District in Arusha Region held under a right of occupancy comprised in the certificate of Tittle No. 9648 pending hearing and determination of Land Case No. 34 of 2022.

The Respondents filed the counter affidavit in opposing the application and the same was deponed by the first Respondent, Martin Raymond Macha. In his reply to the counter affidavit, the Applicant raised three points of objection based on the correctness of the counter affidavit opposing the application. The points of objection are reproduced here under: -

- 1. That, the counter affidavit is incurably defective for being in contravention of section 7 of the Notaries Public and Commissioner for oaths Act, Capo 12 RE 2019 which prohibits any commissioner for oaths to exercise any of his powers as commissioner for oaths in any proceedings or matter on which he is advocate to any of the parties or in which he is interested.*
- 2. That, the counter affidavit is incurably defective in the jurat of attestation for being undated as required by section 8 of the Notaries Public and Commissioner for oaths Act, Capo 12 RE 2019 which requires every notary public and commissioner fir oaths before whom any oath or affidavit is taken to insert the place and the date the oath or affidavit is taken or made.*
- 3. That, the counter affidavit is defective for raising arguments on paragraph 3 and 11.*

As a matter of legal representation, the Applicant was ably represented by Mr. George Njooka, learned counsel while the Respondent was represented by Mr. Bashir Malya, learned counsel.

When the matter was called for hearing of the preliminary objections raised by the Applicant, the counsel for the Respondent immediately conceded to all points of objection and informed the court that the Respondent intended not to contest the application. The counsel for the Respondent was of the view that, as there is a prior order to maintain the status quo, he do not see how the parties will be affected with the grant of the application. He therefore prayed that the application should be granted without costs as the Respondent did not labour this court in hearing and determining the objections.

The counsel for the Applicant submitted that, as the counsel for the Respondent concede to the preliminary objection, this court should issue order for costs as the Applicant had incurred costs in pursuing this application. the Respondent however insisted on the grant without order for costs as the Respondent had conceded to the preliminary objection without opting for hearing hence serving court's time.

I have considered the arguments by the parties as with regard to the preliminary objections. Since the counsel for the Respondent

conceded to the preliminary objections the same are hereby upheld. As pointed out above, the counsel for the Respondent informed this court that the Applicant does not intend to contest the application for the obvious reason that the grant of the same is not likely to prejudice any of the parties. I therefore grant the application as prayed for.

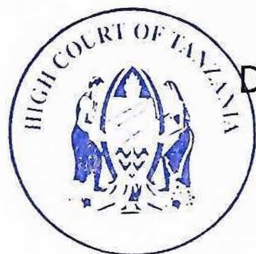
An order for temporary injunction is issued restraining the Respondents or their employees, agents or any other person working under their instructions from interfering the disputed land described as 7 acres designated as Farm No. 98/3 situated at Meru District in Arusha Region held under a right of occupancy comprised in the certificate of Tittle No. 9648 pending hearing and determination of Land Case No. 34 of 2022.

On the prayer for costs raised by the counsel for the Applicant the same is not granted for the obvious reason that, the Respondent conceded to the objection before the same was heard thus, the counsel for the Applicant cannot say that he incurred costs in prosecuting the preliminary objections. The counsel for the Respondent was generous enough not to contest the application thus, I do not see any reason why this court should issue order for costs in the circumstance like the present one. I therefore do not allow the prayer for costs.

In the outset, the application is granted with no orders as to costs.

It is so ordered.

**DATED** at **ARUSHA** this 01<sup>st</sup> Day of August, 2022.



  
D.C. KAMUZORA

JUDGE

