

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 58 OF 2021

ADOLPHINA MASSABA.....APPLICANT

VERSUS

CRDB BANK.....1ST RESPONDENT

MEM AUCTIONEERS GENERAL BROKERS LTD...2ND RESPONDENT

HENRY SATO MASSABA.....3RD RESPONDENT

M/S DOMINIC (TANZANIA) LOGISTICS.....4TH RESPONDENT

RULING

15/12/2021 & 13/01/2022

N.R. MWASEBA, J.

This is a ruling on a preliminary objection raised by the fourth respondent basing on the following points of law:

1. That the application is bad in law and or incompetent for contravening an order of this court dated 16th February, 2021.
2. The application is misconceived and bad in law for being preferred and being prematurely filed without pending suit in support of it.

In court, both parties were represented. While Mr George Masoud, learned counsel appeared for the applicant, Mr Musa Kiobya learned counsel appeared for the fourth respondent. The preliminary objection was disposed of orally.

The matter was called up for disposal of the preliminary objection on 9/9/2021. Unfortunately, after the counsel for the respondent's submission on the first point of law and about to start submitting on the second point of objection, the health condition of the counsel for the applicant changed as he told the court that he was not feeling well. As a result, the matter was adjourned. Thereafter, the counsel for the applicant never appeared in court and the matter had been adjourned for five consecutive times without his appearance, then the sixth time the hearing proceeded ex parte on the second point of objection.

On the first point of objection Mr Kiobya avers that on 16/2/2021 the applicant was granted his application to file a supplementary affidavit in respect of his application filed on 10/2/2021. On 24/2/2021 the applicant filed the supplementary chamber summons supported by and affidavit which contravened the order of the court dated 16/2/2021. That, the previous application had two parties, namely **Adolphina**

Massaba V M/s Dominic Logistics (T) Ltd while the current application appears with four respondents. The former application emanates from Probate and Administration cause No. 20 of 2003, while the original case of the current one is omitted. He says the gist of the order of the court was to file a supplementary affidavit and not to add material facts and other parties and omitting the original case where the case emanates. So, it was a contravention of court order and this renders the application incompetent and should be struck out.

Submitting on the second point in the absence of the counsel for the applicant, the counsel for the respondent states that there is no suit which has been referred to with regard to the applicant's prayer. That, on 25th March, 2021 the applicant filed land case No. 7 of 2021. By that time the objection was already filed on 1/3/2021. It appears that the applicant was pre-empting the point of objection which was raised, and such an action is not permissible. He referred this court to the court of appeal's decision in the case of **Standard Chartered Bank and Another V. VIP Engineering and Marketing Ltd and Others**, Civil Application No. 222 of 2016 (Unreported) at page 8 second paragraph

where the court of appeal denied the party to rectify the defect after one raising a preliminary objection to that effect.

He therefore argues that the application is not proper before this court, so he prays the same be struck out with costs.

After having the submission in chief, the issue is whether the preliminary objection has merit.

I wish to start with the first point of objection of which the applicant was allowed by the court to file supplementary affidavit. The order states:

"... . I order and agree with the applicant that because it is before this court for the first time, I allow the supplementary affidavit be filed in 10 days from today."

Sgn: Hon Rwizile J.

16/02/2021

Looking at the supplementary affidavit, the applicant went further by amending the chamber summons and affidavit, adding more respondents which were out of the court order. I agree with the counsel for the respondent that the applicant acted in contravention of court order dated 16/02/2021 and therefore I struck out the supplementary application.

The second point of objection says the application is misconceived and bad in law for being preferred and being prematurely filed without pending suit in support of it.

The application before me has been made under **Section 68 (c), and Section 95 of the Civil Procedure Code**, CAP 33 R.E. 2019 whereby the applicant prays before this court to grant temporary injunction restraining the 1st, 2nd, 3rd and 4th respondents and or their agents, assignee or any person (s) acting under their instruction from evicting, trespassing the house which belongs to the applicant located at Land Farm No. 2731 at Visiga area within Kibaha Township pending the hearing of the main suit on merit.

In her application, she referred this court to the Probate Cause No 20 of 2003 as the original case. Unfortunately, the said Probate cause was closed on 12/8/2013, therefore it is not a pending case. That means her application has been misplaced as there is no pending suit and the suit she referred to was already finalized before this court. **Section 68 (c) of the Civil Procedure Code** (Supra) gives power the court to grant temporary injunction in order to prevent the ends of justice from being defeated. This order can be given if there is a pending suit whose end of

justice may be prevented from being defeated by granting temporary injunction to that effect when need arise. The referred suit is not pending, so her application has no legs to stand here and it ought to be struck out.

Therefore, the preliminary objection has merit, and I sustain it. Each party will bear own costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 13th Day of January, 2022.



N.R. Mwaseba
N.R. MWASEBA
JUDGE
13/01/2022