

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**MISC.CIVIL APPLICATION NO. 14 OF 2022**  
(C/F Application for Execution No. 4 of 2020)

**ISLAMIC DEVELOPMENT FOUNDATION..... APPLICANT**

**VERSUS**

**DISTRICT COMMISSIONER OF MWANGA.....1<sup>ST</sup> RESPONDENT**

**DISTRICT EXECUTIVE DIRECTOR OF MWANGA.....2<sup>ND</sup>RESPONDENT**

**GEORGE EFEKIE MFANGAVO.....3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**RULING**

*1/9/2022 & 11/10/2022*

**SIMFUKWE, J.**

In this application, the applicant among other things prayed the court to issue an order to the respondents to show cause as to why they should not be held in contempt of the Order of the High Court at Moshi issued by the Deputy Registrar on 21<sup>st</sup> April,2022.

The application is preferred under **section 95 of the Civil Procedure Code, Cap 33 R.E 2019** and any other enabling provision of the law. The application is supported by the affidavit deponed by Amaly Temu, the Principal Officer of the Applicant.

During the hearing of this application which was conducted through written submissions, the applicant was represented by Mr. Ngereka



Eliamini Miraji, the learned counsel, while the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents were represented by Mr. Yohana Marco, the learned State Attorney.

In support of the application, Mr. Ngereka submitted that the the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents with no legal justification stopped implementation of the court order which was being implemented by the court broker by the name of Mathias Chuwa t/a Kilicraals Safaris.

It was argued that any court order is challenged through the court process by making application to either set it aside, vary or vacate it.

It was further stated that the court order must be obeyed and failure of which amount to contempt of court. He cemented the position with the case of **Karoki Chogoro vs Waitihache Merengo, Civil Appeal No. 164 of 2018** at page 7 where the Court referred to the case of **TBL vs Edson Dhobe, Miscellaneous Civil Application No. 96 of 2006** which held that:

*"Court orders should be respected and complied with. Courts should not condone such failures. To do so is to set bad precedents and invite chaos. This should not be allowed to occur."*

Mr. Ngereka also cemented his argument by making reference to the case of **Mary Joseph vs Rachel Zephania, Miscellaneous Land Application No. 37 of 2020** at page 7 and 8.

From the above cited authorities, Mr. Ngereka averred that whenever a court order is issued, it must be respected and complied with. That, in the instant case, the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> respondents decided to prevent the court broker from exercising (sic) and implementing the court order. On that



basis, he prayed the court to find and hold that the respondents are in contempt of court order. Thus, they should be summoned to show cause as to why the court should not hold that they are in contempt of court.

Before concluding his submission, the learned counsel for the applicant raised one concern in respect of the counter affidavit which was sworn by the 3<sup>rd</sup> respondent. That, it was sworn by the 3<sup>rd</sup> respondent who is an individual who swore the joint counter affidavit to on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> respondent while they are in law represented by the Attorney General. It was the opinion of Mr. Ngereka that in that regard the said counter affidavit is defective and the same should not be relied upon. Therefore, no counter affidavit was filed by the respondents as the one filed is defective in its entirety.

Mr. Ngereka continued to argue that even if the same is worth to be relied upon, the respondents denied to have prevented the court broker from complying with the court order. He said that if that is the case, why are they not supporting the application or assist the court by allowing the court broker to exercise and implement the court order?

In conclusion, he urged the court to grant the application as prayed.

On the other side, the learned State Attorney for the respondents before going to the gist of this application raised a concern to the effect that the application was supported by the defective affidavit which attracts incurable defect to the application as well. That the affidavit is fatally defective on the verification clause since Amaly Temu was neither a court broker nor a person who was present on the material day, thus not aware of the facts establishing their claims; yet he is the one who verified on the



verification clause being knowledgeable with the facts establishing the applicant's claims.

It was stated by Mr. Yohana that the incurable defects of the affidavit, attracts the application to be struck out as stated in the case of **Lemi S. Sekagi vs Charles Ngusa Sekagi, Misc. Land Application No. 118 of 2021** (HC). He also referred to the case of **Yazidi Kassimu t/a Yazidi Auto Electric Repairs vs Attorney General, Civil Application No. 354/05 of 2019** in which the Court of Appeal held that:

*"I am at liberty to order an amendment of the affidavit or to strike out the application for want of affidavit, the present application is different for a matter was raised by the respondent and allowing the applicant to amend would be ordering to pre empty the respondent point of law."*

Mr. Yohana for the respondents continued to say that in the cause of court broker implementing his duties as per the court record, there were no sufficient evidence supplied to this court proving the alleged prevention of the court broker's right to deal with powers which the applicant claimed to be interfered by the respondents.

On that basis, Mr. Yohana formed an opinion that there was no act done by the first, second and third respondent on 25/4/2022 which prevented such court broker from implementing execution. It was further stated that the order of the court was not issued in the presence of the 3<sup>rd</sup> respondent who is the Village Chairman of Masumbweni Village and not Ms Elizabeth.

As far as this application is concerned, the learned State Attorney for the respondents submitted that the respondents never disobeyed any court order since there is no any report from the said court broker informing the

court that he has been prevented from implementing the said order or any evidence in the affidavit to show how the prevention was done by the respondents. Mr. Yohana invited this court to take into consideration **Rule 7(d) of the Court Brokers and Process Servers (Appointment, Renumeration and Disciplinary) Rules, G.N No 363 of 2017** which provides for duties and functions of the court brokers including preparing and filing returns on the manner execution was carried out to the court which issued the order.

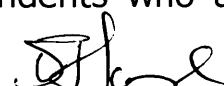
Responding to the concern that the counter affidavit was sworn by the 3<sup>rd</sup> respondent who is an individual, it was stated that the prayer could hold water if the counter affidavit was affecting moving the court to determine the matter. He argued that this court through its inherent powers can look upon the substances of arguments, reasoning and reliefs to dismiss this application and in doing so, this court should look upon the laws applicable in the matter at hand.

He stated further that the 3<sup>rd</sup> respondent is not an individual, he is a Chairman of Masumbweni Village who is also sued in this application as a leader, not as an individual but as a chairman.

In his conclusion, Mr. Yohana prayed the court to dismiss this application with costs as this application has no merit.

Having considered the parties' submissions, the issue for consideration is *whether this application has merit?*

Before dealing with the merit of the application, I find it prudent to start with the issue which was raised by Mr. Ngereka, that the counter affidavit is defective on the reason that the 3<sup>rd</sup> respondent swore the joint counter affidavit to represent the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents who are in law



represented by the Attorney General. In reply, Mr. Yohana argued that justice cannot be defeated just because the counter affidavit was sworn by the 3<sup>rd</sup> respondent. That the same would hold water if it was affecting the moving of the court to determine the matter.

Basing on the above argument, I do not see any reason to differ with the submission by the learned State Attorney. There is no law which bars the co-respondent to swear a joint counter affidavit. In this case, the 3<sup>rd</sup> respondent deponed the said counter affidavit in the capacity of the Chairman of Masumbeni village and co-respondent, thus conversant with the facts which he deponed.

Coming to the main application, in the chamber summons, the applicant prayed this court to summon the respondents to show cause why they should not be held in contempt of court order issued by Deputy Registrar on 21/4/2022. The learned State attorney argued that the respondents have not disobeyed the court order since the applicant did not support his argument with evidence.

The term 'contempt' has been defined in **Black's Law Dictionary, 8th Edition** to mean:

*".... a disregard of, or disobedience to, the rules or orders of the legislative or judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body."*

For there to be an indication of contempt, the applicant must establish in his affidavit materials enough for the court to rely upon. In the applicant's affidavit, there is no evidence to prove that the court order was disobeyed.

The applicant did not attach with his affidavit the report of the said Court broker to substantiate that the implementation of the court order was made impossible by the act(s) of the respondents. The affidavit was deponed by one Amaly Temu who is not in the position to state how the said order was disobeyed and how the respondents herein obstructed the process of execution. Therefore, the applicant did not establish his assertion with evidence so that this court could grant the prayer sought.

I am aware that court orders should be respected an in case there is any disobedience, then the party should be punished. However, the applicant must present sufficient materials for the court to issue such order. In this application, the applicant did not present materials for the court to rely on them or issue the order sought. He has not shown sufficient reasons that may move this court to proceed to grant the order sought.

In the upshot, I hereby dismiss this application. Basing in the circumstances of this case, no order as to costs.

It is so ordered.

Dated at Moshi this 11<sup>th</sup> day of October, 2022.

  
**S. H. SIMFUKWE**

**JUDGE**

