

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MOSHI

AT MOSHI

LAND REVISION NO 1 OF 2022

(Originating from Misc. Land Application No 157 of 2019 of District Land and Housing Tribunal Moshi and Shauri la Madai ya Ardhi Na 30 of 2018 Baraza la Ardhi la Kata Moshi)

BODI YA WADHAMINI

URU SECONDARY SCHOOL..... APPLICANT

VERSUS

LABAN MASAULE MSUMANJE.....RESPONDENT

27th September, 2022 & 19th October, 2022

RULING

MWENEMPAZI J:

This application is brought by the way of chamber summons under section 43(1) (b) of Land Dispute Court Act, Cap 216 R.E 2019 and section 79(1) (c) of the Civil Procedure Code, Cap 33 (R.E 2022). The applicant is craving for the following orders exparte and inter-parties as follows: -

- i. That, this honorable High court be pleased to revise the whole proceedings, ruling and orders in Misc. Land Application No 157/2019 of the District Land and Housing Tribunal of Moshi.

- ii. That, this honorable High court be pleased to grant costs of this application and;
- iii. Any other relief deems fit and just to grant.

The application was supported by the affidavit of Gabriel M. Shayo learned advocate for the applicant and on 06th day of July, 2022 the respondent counsel one Erasto Kamani filed counter affidavit; this was followed by a notice of preliminary objection on points of law filed on 22nd day of July, 2022, raising two grounds which are as follows: -

1. That, this application is un maintainable and bad in law as according to paragraph 5 of the applicant's affidavit it has been filed by non-existing party.
2. That, the affidavit in supporting chamber summons is curably defective for being wrongly verified.

The learned counsel for the applicant on 28th day of July, 2022 after being served with counter affidavit and notice of preliminary objection prayed to this court to grant leave to proceed with hearing by the way of written submission. The learned counsel prayer was granted and the parties filed the submission based on the scheduling orders of this court. I have given due consideration to the submissions filed by the learned counsels.

The respondent submitting in written submission in support of preliminary objection that the applicant Bodi ya Wadhamini does not exist and does not own the four acres of land taking the same from the applicant affidavit; the learned counsel submission amplified that this matter cannot proceed once the court is made aware. He supported this argument by citing the

case of **Fort Hall Bakery Supply Company Limited vs. Fredrick Mwigai Wangoe (1959) E.A 474.**

It was submitted further that the remedy for filling a suit by non-existing legal person is to strike the suit out and to bolster his argument he cited the case of **Respicius Emilian Mwijage vs. The Municipal Director, Ilemela Municipal Council & Others.** He prays this court to allow the preliminary objection and strike out this application.

On the other side the applicant resisted the first point of objection by first revealing that *Bodi ya Wadhamini Uru secondary* which is non-existing party and does not own the suited land subject of execution in Misc. Land application No 157 of 2019, district land and housing tribunal of Moshi. He stressed that it was the fault of the respondent suing a non-existing legal personality in the lower courts. He amplified that at the stage of the High Court, he has no capacity of changing the names of the parties.

It was the submission of the counsel for the applicant that he raised the same objection in the Misc. Land application No 157 of 2019, district land and housing tribunal of Moshi but the same was not taken into account. He amplified further that the *Bodi ya Wadhamini Uru secondary* is not registered hence not capable of being sued or suing; to support this argument he cited the case of **Richard I. Sumayi vs. Shule ya Msingi Kamarage, Labour Revision No. 27 of 2013 (Unreported).**

The applicant stressed in his application that the cases cited in respondent submission to wit **Fort Hall Bakery Supply Company Limited vs. Fredrick Mwigai Wangoe (supra)** and **Respicius Emilian Mwijage**

vs. The Municipal Director, Ilemela Municipal Council & Others; are distinguishable in terms of facts and *ratio decidendi* with the current case at hand.

Having considered the submission of the parties, I will start to determine the first limb of the preliminary objection which is that the application is bad in law as it has been filed by non-existing party. The respondent avers that upon going through the affidavit in support of application specifically paragraph 5 of the affidavit reveals the applicant does not exist.

Having gone through the submissions of both parties, it not disputed facts from the records of this court that *Bodi ya Wadhamini Uru secondary* is not a legal entity. It is the respondent prayer that this court strikes out the revision for being not maintainable and bad in law. I am of the considered opinion that, like human beings with names, legal personality has their distinct names. It is from the applicant affidavit specifically paragraph 5 that the applicant is non existing legal entity hence capable of not being suing or sued.

However, the synopsis of this case revealed that the respondent sued the applicant a non-existing legal personality in respect of land Case No 30 of 2018 of Mtakuja Ward Tribunal and Misc. Land application No 157 of 2019 which is the execution for the ward tribunal decision where all were determined in favor of the respondent, despite the objection being raised but it was fruitless then this revision came into the play as the rolling ball.

From the above, the legal quagmire raised now in this court is the result of the respondent suing a non-existing legal personality; I am of the

considered view that the present revision is incompetent and bad in law. See the case of **William Godfrey Urassa vs. Tanapa Arusha, Misc. Civil Appeal No. 12 of 2000** and **The Registered Trustees of Catholic Dioces of Arusha vs. The board of Trustees of Simanjiro Pastoral Education Trust, Civil case No 3 of 1998, High court of Tanzania at Arusha.** (Both unreported).

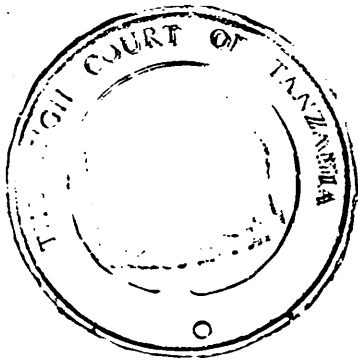
It is a cardinal principle of law that the parties who featured in the original or initial trial should always be the same without changing the names at the appellate court. See the case of **Joseph K Magombi vs. The Registered Trustees of National Park, Revision No. 8 of 2011, CAT at Arusha (unreported).**

Since the proceedings instituted by the respondent in the lower courts were based on none existing legal personality. It is my firm view that the respondent sued a non-existing party and the proceedings of the lower courts were none existing legal entity and the same cannot have force of law hence it was incompetent and nullity.

In that regard, the first point of objection is merited and I see no need to proceed with the second limb of preliminary objection since it won't save the sunken boat. In that event, I hereby strike out this revision for being incompetent and filed by non-existing legal person. However, the lower court proceedings and orders were preferred against the same non- existed legal personality; I hereby nullify the same for being nullity without any force of law. I direct the respondent to sue a proper and registered legal



personality. Considering the circumstance of this case I make no orders as costs. It is so ordered.



T. M. Mwenempazi.
T. M. MWENEMPAZI

JUDGE

19/10/2022