

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT MBEYA**

**MISC. LAND CAUSE NO. 12 OF 2013**

**GAPCO TANZANIA LIMITED.....APPLICANT**

**VERSUS**

**1. RAMZAN D. WALJI COMPANY LTD. }  
2. RUNGWE DISTRICT COUNCIL }....DEFENDANTS**

**R U L U N G**

Date of last order: 06/03/2012  
Date of Judgment: 11/03/2013

**KARUA, J.**

The road is marred by obstacles for this application. It has been subjected to serious attacks drawn up from both the respondents, that is, Ramzan D. Walji Company Limited, the 1<sup>st</sup> respondent and Rungwe District Council, the 2<sup>nd</sup> respondent, whose counsels, Mr. Mbise and Mr. Luvinga, respectively marshaled all their skills and rendered this application obsolete.

The applicant, GAPCO Tanzania Ltd, are in unfortunate situation. It has sued the first respondent in land case number 1 of 2010. The two had made a contractual agreement whereby the first respondent undertook to sale petroleum products belonging to the applicant. However it is said that the 1<sup>st</sup> respond breached the agreement and the applicant terminated the agreement. The business is being conducted at the premises that belonging to the 2<sup>nd</sup> respondent. However, before the suit between the applicants and the 1<sup>st</sup> respondent is determined, the 2<sup>nd</sup> respondent threatens to terminate the lease agreement between the applicant and the 2<sup>nd</sup> respondent. The applicant is said to have sublet the premises to another company. This is the thrust before the current application, in which the applicants are in search of the company injection that will prohibit the 2nd respondent from evicting the applicants from the suit premises.

Both the respondents came out with very strong exceptions, resting on misjoinder; non-joinder; wrongly moving the court; absence of cause of action; lodging application without notice and defective affidavit. With

respect, there is no way that the applicant could skip these handles. I will take only three grounds. Firstly, this application has been improperly lodged against the 2<sup>nd</sup> respondent without a suit. In other words, there is no suit pending against the 2<sup>nd</sup> defendant. This ground was forcefully raised by Mr. Mbise and is quite merited. Secondly, Mr. Luvinga, felt aggrieved by the way the second respondent was pulled into this matter without the necessary notice, in terms of section 190 of Cap 287, R.E. 2002. With respect, Mr. Luvinga is right. The local Government authority cannot be said without presenting to it a 30 days' notice. Lastly, the affidavit in support of the application had a lot of flaws.

Consequently, I will strike out the application with costs.

**S. V. G. KARUA**

JUDGE

DATED AT MBEYA

11<sup>th</sup> March, 2013.

Appearances:

For the appellant: Mr. Mushokorwa

For the 1<sup>st</sup> Respondent: Mr. Mbise

For the 2<sup>nd</sup> Respondent: Absent