

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

AT SONGEA

MISCELLANEOUS LAND APPLICATION NO. 31 OF 2015

EDWARD TOLLE AND 657 OTHERS APPLICANTS

VERSUS

EXPORT PROCESSING ZONES AUTHORITY RESPONDENT

RULING

9th & 23rd February, 2016

MGETTA, J.

This application is brought under certificate of urgency under **Order XXXVII rule (1)** and **section 95 of the Civil Procedure Code Act Cap 33 R. E. 2002 (henceforth the CPC)**. The applicants pray for this court to grant temporary injunction to restrain respondent from evicting them

from a Suit land pending determination of the main suit pending before this court. An affidavit of EDWARD TOLLE is placed in support of this application.

Basically, in his affidavit EDWARD TOLLE advanced that he is the first applicant who has been mandated by other 658 applicants to swear it. Besides, he wrote that the applicants have filed a suit pending before this court, challenging the modality used to compensate them for their unexhausted improvements found to exist in the suit land. In paragraph 4 of the affidavit, the deponent provides further that a sixty (60) days notice to vacate from the suit land from the date when compensation was effected has already expired and thus the applicants are in danger of being forcefully evicted any time. It is further stated that if the applicants are evicted, they are bound to suffer irreparable loss. On the other hand, there was no trace of counter affidavit by respondent. However, Mr. Jakob Sarungi, the learned advocate for the respondent requested me to proceed without counter affidavit having been filed.

During hearing of the application, the applicants enjoyed a legal service of Mr. Edson Mbogoro the learned advocate who argued for the application to be granted so that his clients will not suffer irreparable loss

which cannot be compensated by way of damage; while the respondent had a legal service of Mr. Jakob Sarungi, the learned advocate who strongly opposed this application.

However, when I was in the process of composing this ruling, I discovered a legal issue in respect of competence of this application and since none of the parties did raise it before, it is ***suo motto*** raised and be decided without going into the merit of this application. Therefore, the only issue to be canvassed here is whether this application is properly before this court.

As noted earlier, this application is brought under **Order XXXVII rule 1 and Section 95 of the CPC**. I will not labour much on **section 95 of the CPC** which provides for inherent powers of this Court and therefore not relevant to support the instant application.

A cursory glance of the Order cited here in, it is provided as follows;

"Where in any suit it is proved by affidavit or otherwise—

(a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit of or suffering loss of value by

reason of its continued use by any party to the suit,
or wrongly sold in execution of a decree;
or

(b) That the defendant threatens, or intends to remove
or dispose of his property with a view to defraud
his creditors,

the court may by order grant a temporary injunction
to restrain such act or make such other order for the
purpose of staying and preventing the wasting,
damaging, alienation, sale, loss in value, removal or
disposition of the property as the court thinks fit,
until the disposal of the suit or until further orders:

Provided that an order granting a temporary
injunction shall not be made against the
Government, but the court may in lieu thereof make
an order declaratory of the rights of the parties”.

From the foregoing, it is crystal clear that there is no **Order XXXVII rule 1** as cited in the chamber summons but **Order XXXVII rule 1 (a) and (b) of the CPC** and each paragraph serves a different purpose hence an applicant has to choose either paragraph (a) or (b) and not taking in both or leaving out both of them. In this application, the applicants' advocate has invented his own "Order" by not choosing either of the two paragraphs, but by leaving out all the two paragraphs. The proper citation

therefore ought to be **Order XXVII rule 1 (a) of the CPC**. Therefore, in this application the applicants failed to properly cite the rules of procedure.

It is now trite and settled principle of law in our jurisdiction that improper or non citation of law or rule or paragraph of the law is not a technical but a fundamental matter which goes to the root of the matter and hence makes the proceedings incompetent, liable to be struck out. There is a chain of authorities in this respect but just to mention a few of them are **China Henan International Co-operation Group Versus Salvand K.A. Rwegasira** [2006] T.L.R. 220, and **Robert Leskar Versus Shibesh Abebe**, AR Civil Application No. 4 of 2006, Court of Appeal at Arusha (unreported). To make more emphasis, I have to cite the case of **Edward Bachwa and 3 Others Versus The Attorney General & Another**; Civil Application No 128 of 2006⁴(CA) (DSM), whereby Hon. Rutakangwa J.A. stated and I quote that:-

"..... Wrong citation of the law, Section, subsections and or paragraphs of the law or non citation of the law will not move the Court to do what it is asked and renders the application incompetent"

For the foregoing reasons, this application is not properly before this court for improper citation of the sub rule. I thus proceed to strike out this incompetent application. I make no order for costs.

It is so ordered.



J. S. MGETTA

JUDGE

23/2/2016

Date: 23/02/2016

Coram: Hon. G. H. Herbert, DR.

Applicants: Mr. Sarungi/ Mr. Mbogoro Advocate

Respondents: Mr. Jacob Sarungi Advocate

C/C: Hobokela

Court:- Ruling delivered in presence of Applicants and Counsel for the Respondents.



G. H. HERBERT

DEPUTY REGISTRAR

23/02/2016