

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND REVISION NO. 8 OF 2017

SIMON GAGA KILULU.....APPLICANT

Versus

HANSEN NEHEMIA.....1ST RESPONDENT

RHINO INVESTMENT COMPANY LTD.....2ND RESPONDENT

Date of Last order: 04/05/2018

Date of Ruling: 08/06/2018

RULING

S.A.N WAMBURA, J:

The applicant **Simon Gaga Kilulu** brought this application under Section 22 and 44 (1) (b) of the Magistrates Courts Acts, Cap. 7 R.E. 2002 and Section 79 (1) (c) and Order XXI Rule 27 of the Civil Procedure Code Act, Cap. 33 R.E. 2002 praying for the following Orders;

- (i) *That this Honourable Court be pleased to stay an execution of the decree or order made by the Kinondoni District Land and Housing Tribunal on the 24 June 2016 and 24th day of May 2017 pending the hearing and determination of the revisional proceedings.*

- (ii) That this Honourable Court be pleased to call the records of the case of the Kinondoni District Land and Housing Tribunal in Misc. Land Application No. 373 of 2016 and examine its correctness, propriety and the legality of the decision made therefrom and revise the said proceedings and set them aside.
- (iii) Costs of this application be provided for.
- (iv) Any other reliefs as this Honourable Court may deem fit and/or equitable to grant.

Before the hearing of the application, the respondents **Hansen Nehemia and Rhino Investment Company Limited** raised preliminary objections on points of law to the effect that;

1. That the said is bad in law for having been preferred under wrong and/or improper provisions of the law.
2. The application is incompetent and bad in law for being omnibus in character and/ or containing omnibus reliefs.
3. That the Court has no jurisdiction in terms of Regulation 25(1) (2) of the Land Disputes Court (District Land and Housing Tribunal) Regulations 2002.
4. The application is hopelessly time barred.

The applicant appeared in person unrepresented whereas the respondents **Hansen Nehemia and Rhino Investment Company Limited** had the services of Mr. Mluge Karoli learned Counsel.

With leave of this court, the preliminary objections were disposed of by way of written submissions. I thank both parties for adhering to the schedule.

Upon perusal of the preliminary objections raised by Mr. Kaloli, I find that it is prudent to first look on the first and fourth grounds of objection are in respect of the jurisdiction of this court.

Submitting on the 1st ground of objection, Mr. Kaloli contended that the application was brought under the wrong provision of the law. He stated that the applicant in the chamber summons preferred and cited Section 22 and 44(1) (b) of the Magistrates Courts Acts, Cap. 7 R.E. 2002 instead of citing the proper Act which provides for the establishment of land disputes matters which is the Land Disputes Courts Act Cap. 216 R.E.2002.

Mr. Kaloli averred that the provisions cited by the applicant are too general in character and are incapable of moving this court to act upon the reliefs sought. He contended that the proper provision is Section 41 of the Land Disputes Courts Act which vests this Court with powers to entertain applications for revision.

That the court cannot be moved by the said provisions as it is not the onus of the court to flip through all books of law and seek the enabling provisions. He was of the view that it is the duty of the applicant to cite proper law, provision and specific section, sub section, paragraph or items. He referred this court to the cases of **Almas Iddie Mwinyi Vs. National Bank of Commerce and Mrs Ngeme Mbita (2001) 83, National Bank of Commerce Vs. Sadrudin Meghji (1998) TLR 503** and **Transport Equipment Ltd Vs.Devram P. Valambhia (1995)TLR 161**. He therefore prayed for the application to be struck out with costs.

In response the applicant submitted that the preliminary objections raised are totally misconceived as they were not properly pleaded in the respondents' pleadings. He was of the

view that the objections was supposed to be pleaded in the 1st defendant's written statement of defence. He therefore prayed for the preliminary objections to be dismissed with costs.

Having carefully considered the rival submissions of both parties, and having considered the relevant law I have observed that this court has not been properly moved.

It is trite law that proceedings brought under wrong provisions of the law are incompetent and ought to be struck out. It is equally settled law that non citation of the relevant provisions renders the proceeding incompetent.

This has been the stance of the Court in a number of cases such as **Edward Bachwa and 3 Others Vs. The Attorney General & Another**, Civil Application No. 128 of 2006 and **Almas Mwinyi Vs National Bank of Commerce and Another Civil Application No. 88 of 1998 (unreported)** to mention just a few.

In the case **Hussein Mgonja Vs The Trustees of the Tanzania Episcopal Conference**, Civil Revision No. 2 of 2002 (Unreported)

Arusha Registry the Court had this to say:

"If a party cites the wrong provision of the law the matter becomes incompetent as the Court will not have been properly moved".

Sections 22 and 44 (1) (b) of the Magistrates Courts Acts, Cap. 7 R.E. 2002 do not give this court jurisdiction to entertain the matter whose jurisdiction has been provided for under the law. As correctly submitted by Mr. Karoli the proper provision is Section 41 of the Land Disputes Courts Act which vests this court with powers to entertain applications for revision.

But even if the applicants could have properly cited the proper provisions of the law, the application could still be incompetent because the prayers sought are totally different which renders the application to be omnibus.

In the case of **Rutagatina C.L VS The Advocate Committee and another Civil Appeal No. 98 of 2010 (unreported)** the Court of Appeal of Tanzania held that *when two different prayers with different provisions of the law are sought in one application, then the said application becomes omnibus and cannot stand in the eyes of the law.*

The application for stay of execution and calling for record (revision) cannot be brought together as they are two different prayers with different applicable provisions of the law.

Having said so, I find no reason to labour on other ground of objection as these grounds suffices to dispose of the application. The 1st and 2nd preliminary objections raised by the respondents are herein sustained.

The application is accordingly struck out with costs.


S.A.N WAMBURA
JUDGE
08/06/2018