

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

MISC. LAND APPL. NO.503 OF 2017

MATHIAS DAFFA & 27 OTHERS.....APPLICANTS

Versus

**PERMANENT SECRETARY, MINISTRY OF
WORKS.....1ST RESPONDENT
TANZANIA NATIONAL ROADS AGENCY
(TANROADS).....2ND RESPONDENT
ATTORNEY GENERAL.....3RD RESPONDENT**

RULING

Date of Last order: 23.3.2018

Date of Ruling: 27.4.2018

S.A.N WAMBURA, J:

The applicants **Mathias Daffa and 27 others** brought this application under Order 1 Rule 8 of the Civil Procedure Code Cap. 33 R.E 2002 praying for the following orders;

- (i) *All persons appearing in the attached Annexure MBZ-1 at Mbezi locality in Kinondoni District, Dar Es Salaam be joined in this Application as co-Applicants/Plaintiffs and/ or Co- Defendants as they have common interest and are claiming similar reliefs against the Respondent(s).*
- (ii) *An interim injunctive order be issued by this Honourable Court to refrain the Respondent and/*

or his agent or agents from interfering with the premises and properties of the said Applicants, residents of an area between Temboni and Kibanda cha Mkaa at Mbezi locality in Kinondoni District, Dar Es Salaam, pending the hearing of this Application.

- (iii) This Honourable Court be pleased to issue any other order and reliefs as the ends of justice demand until the hearing of the main suit.*

Before the hearing of the application, the respondents **Permanent Secretary, Ministry of Works, Tanzania National Roads Agency and Attorney General** raised preliminary objections on points of law to the effect that;

- 1. That Application has been brought under wrong enabling provision of the law.*
- 2. The Application is bad in law for want of proper Affidavit supporting Application.*

The applicants were represented by Mr. T. Raphael the learned Counsel whereas the respondents were represented by Ms. R. Mtulia State Attorney.

Submitting on the 1st ground of objection, Ms. Mtulia averred that the provisions of laws cited by the applicants in the chamber summons do not move this court to grant prayers for temporary injunction. That there was no law which has been cited for this court to grant a temporary injunction. She submitted that wrong citation of the law renders the application incompetent.

In response, Mr. Raphael did not submit much, he was of the view that this court would use its powers under Section 95 of the Civil Procedure Code.

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 wrong citation cannot move the court to do what it is asked to do. It is equally settled law that non citation of the relevant provisions of the law 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 of **Almas Mwinyi** (supra) 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".

Section 95 of the Civil Procedure Code Cap. 33 R.E 2002 does not give this court jurisdiction to entertain a matter whose jurisdiction has been provided for under the law. The applicants ought to have cited Order XXXVII of the Civil Procedure Code for this court to grant a temporary injunction.

But even if the applicants could have properly cited that Order, the application would still be incompetent because the prayers sought are two and quite different from each other which renders the application 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*

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Having said so, I find no reason to labour on other ground of objection as this ground suffices to dispose of the application. The preliminary objection raised by the respondents is sustained.

In view of the above, the application is accordingly struck out with costs.

S.A.N. WAMBURA

JUDGE
27.4.2018