

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

**MISC. LAND APPL. NO.187 OF 2017**

**MR. ELIAS M.P.LYAKURWA.....APPLICANT**

**Versus**

**MRS. PROF. MARIA JUSTIN TEMU (ADMINISTRATIX OF THE ESTATE OF THE  
LATE MR. FRATERNUS L. TEMU.....RESPONDENT**

**RULING**

*Date of Last order: 12/03/2018*

*Date of Ruling: 13/04/2018*

**S.A.N WAMBURA, J.**

The applicant **Elias M. P. Lyakurwa** made this application under Section 14 (1) of the Law of Limitation Act, Cap. 89 R.E 2002 and Order XXI Rule 24 (1) and Section 95 of the Civil Procedure Code Cap. 33 R.E 2002 praying for the following orders;

- (a) That this Honourable Court be pleased to restrain the respondents, its assignees and any Court Broker acting on behalf of the respondent from evicting the applicant from the property designated as KHNf.MK.839, Wakulima Road Hananasif within Kinondoni Municipal Council, in Dar es Salaam pending hearing of the main application.*

- (b) That this Honourable Court be pleased to extend time within which the Applicant can file an application for stay of execution of the decree emanating from Land Case No. 254 of 2012 which decree is being executed in Misc. Land Application No. 80 of 2016.*
- (c) That this Honourable Court be pleased to extend time within which the applicant can file an application to set aside an ex parte judgment dated 13<sup>th</sup> May 2016.*

The applicant was represented by Mr. Godwin Muganyizi learned counsel whereas the respondent had the services of Mrs. Lyamuya Advocate.

Before the hearing of this application, Mrs. Lyamuya filed a notice of preliminary objections on points of law to the effect that;

- (a) That the Chamber Summons is incurably defective since Order XXI Rule 24(1) of the Civil Procedure Code Cap.33 R.E 2002 is in applicable.*
- (b) That the Chamber Summons is incurably defective since prayer (i) seeking for restrain order contravenes Order XXXVII Rule 1 of the Civil Procedure Code Cap. 33 R.E 2002.*

*(c) That the application is incurably defective since prayer (iii) is not supported by a valid law since the applicant's cited law Order XXI Rule 24(1) of the Civil Procedure Code Cap. 33 R.E 2002.*

Both learned Counsels submitted for and against the preliminary objections raised.

Submitting on the 1<sup>st</sup> and 3<sup>rd</sup> grounds of objection, Ms. Lyamuya contended that it was wrong for the applicant to file this application under Order XXI Rule 24 of the Civil Procedure Code because the execution has already been filed in this court.

On the 2<sup>nd</sup> ground of objection, Ms. Lyamuya averred that there is no matter pending before this court hence this application ought to be dismissed with costs.

In response, Mr. Muganyizi submitted that Order XXXVIII is in respect of an injunction and not execution that is why he cited Order XXI Rule 24 and Order XXXIX of the Civil Procedure Code Cap.33 R.E 2002.

In reply, Ms. Lyamuya reiterated her earlier submissions in chief.

Having carefully read the grounds of objection and submissions from both learned counsels, I entirely agree with Ms. Lyamuya that the provisions of the law cited by the applicant in his chamber application are inapplicable.

This is because one among the prayers sought is the temporary injunction which in order for this court to grant the same, the applicant has to cite Order XXXVIII Rule 1 of the Civil Procedure Code and not otherwise.

More so even if the applicant could have cited Order XXXVIII Rule 1 of the Civil Procedure Code still the application would be incompetent because the application is fatally defective for containing three distinct prayers. The prayers contained in the chamber summons are not supporting to each other.

The basic prayers contained in the chamber summons brought by the applicant are as follows, I quote:

*"(d) That this Honourable Court be pleased **to restrain the respondents, its assignees** and any Court Broker acting on behalf of the respondent **from evicting the applicant from***

***the property designated as KHNK.MK.839, Wakulima Road Hananasif within Kinondoni Municipal Council, in Dar es Salaam pending hearing of the main application.***

- (e) *That this Honourable Court be pleased to **extend time within which the Applicant can file an application for stay of execution of the decree** emanating from Land Case No. 254 of 2012 which decree is being executed in Misc. Land Application No. 80 of 2016.*
- (f) *That this Honourable Court be pleased **to extend time within which the applicant can file an application to set aside an exparte judgment** dated 13<sup>th</sup> May 2016.”*

*[Emphasis mine]*

It is from these prayers, that this court finds that these three basic prayers sought make the present application omnibus.

The reasons for the same is that, **first**, under the relevant provisions of the law an application for temporary injunction, extension of time to apply for stay of execution and an application for extension of time to apply for restoration of an exparte judgment are made differently.

**Secondly,** in determining both applications the considerations to be taken into account are different. It follows therefore that the said three basic prayers contained in the chamber summons cannot be brought and dealt with in one chamber summons.

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 become omnibus and cannot stand in the eyes of the law.*

The application is accordingly struck out for being incompetent.

No order to costs.

**S.A.N. WAMBURA**  
**JUDGE**  
**13.4.2018**