

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

**MISC. LAND APPL. NO.1030 OF 2017**

**MAULIDI SHABANI.....APPLICANT**  
**Versus**

**TEMEKE MUNICIPAL EXECUTIVE  
DIRECTOR.....1<sup>ST</sup> RESPONDENT**  
**FARIDA MOHAMED SAID (As Administratrix of  
the estate of JABAR SAID).....2<sup>ND</sup> RESPONDENT**

*Date of Last Order: 02/03/2018*

*Date of Ruling: 20/4/2018*

**R U L I N G**

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

This ruling is in respect of the preliminary objections on points of law raised by the 1<sup>st</sup> respondent **Temeke Municipal Executive Director** to the effect that;

1. *The applicant has sued the wrong person.*
2. *The affidavit is defective and incurable for containing prayers.*
3. *That the application is prematurely instituted because the applicant has sued the 1<sup>st</sup> respondent without complying*

*with mandatory requirement of serving the 1<sup>st</sup> respondent 30 days' Notice.*

The applicant **Maulidi Shabani** was represented by Mr. Mshana learned Counsel, 1<sup>st</sup> respondent was represented by Mr. Nyanza whereas the 2<sup>nd</sup> respondent enjoyed legal services of Mr. Pongoleli Advocate.

On the date of hearing of the preliminary objection, Mr. Mahushi who was assisted by Mr. Nyanza prayed to abandon the 3<sup>rd</sup> ground of objection and proceeded to submit on the two grounds of objection.

He contended that the applicant has sued a wrong person. That the applicant ought to have sued the Temeke Municipal Council instead of suing the Director of Temeke Municipal Council. He referred to Section 5(1) of the Local Government Act Cap. 288 R.E 2002 and Section 14(1) (b) of Cap. 288.

Submitting on the 2<sup>nd</sup> ground of objection, Mr. Nyanza averred that paragraph 23(ii), (iii), (iv) and 24 of the applicant's affidavit

contain prayers which is contrary to Order XIX Rule 3 of the Civil Procedure Code. He therefore prayed for the application to be struck out with costs.

In response, Mr. Mshana contended that the issue as to whether the Director was to be sued in his capacity or on behalf of the Temeke Municipal Council needs perusal of pleadings and tender evidence which is not the meaning of preliminary objection as stated in the case of **Mukisa Biscuits Manufacturing Ltd.** He was of the view that even if this objection was proper, the proper remedy is provided under Order XIX Rule 10 of the Civil Procedure Code which is to amend the name of the person who was improperly joined and substitute it with a proper name.

Responding on the 2<sup>nd</sup> ground of objection, Mr. Mshana contended that both paragraphs 23 and 24 of the affidavit do not contain prayers. He stated that paragraph 23 is a statement of belief and not a prayer. He therefore prayed to this court to dismiss the preliminary objections raised with costs.

In reply, Mr. Nyanza reiterated his earlier submissions in chief.

Having carefully gone through the submissions from both the learned counsel for the parties, I have observed that the main issue to be determined is whether there is a wrong joinder of the party and whether the affidavit supporting the application contains prayers contrary to Order XIX Rule 3 of the Civil Procedure Code Cap. 33 R.E 2002.

With regards to the 1<sup>st</sup> ground of objection the **Temeke Municipal Executive Director** being sued in lieu of the Temeke Municipal Council, only the latter is capable to sue or being sued in their name. This requirement is purely a point of law, the Temeke Municipal Executive Director being the Chief Executive Officer cannot be sued instead of the employer Municipal Council. Thus I entire agree with Mr. Nyanza that the application was brought under the name of the wrong person. This ground of objection is sustained.

Having said so, I find no reason to determine the other ground of objection, as this ground suffices to dispose the whole application.

Since the applicant also filed the Land Case No. 417 of 2017 which has a similar error, I believe that the same is incompetent and has to be struck out.

Thus this application and the Land Case No. 417 of 2017 are struck out with no order as to costs. Applicant is at liberty to file a proper suit.

It is so ordered.

  
**S.A.N. WAMBURA**  
**JUDGE**  
**20.4.2018**