

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

**MISC. LAND CASE APPLICATION NO. 181 OF 2020**

*(Arising from the Land Case No. 152 of 2019)*

**JAFARI AMRI KIDEVU** *(Suing under the power of  
Attorney of Amina Sultan Beho)* ..... **APPLICANT**

**VERSIS**

**ROSE ZACHARIA ISSAYA** ..... **1<sup>ST</sup> RESPONDENT**

**HARIDI ZUBERI AKILI** ..... **2<sup>ND</sup> RESPONDENT**

**RULING**

**S.M. MAGHIMBI, J:**

On 08/04/2020, the Applicant filed this application under the provisions of Order XXXVII rule 1 (a) and (b), Sections 68(e) and 95 of the Civil Procedure Code, Cap 33 R.E 2019 ("The CPC"). He was praying for this court to grant an order of injunction pending hearing and determination of the main suit in Land Case No. 152 of 2019. The applicant further prayed for the costs of this application and any other order that the court may deem fit to grant.

On the 02/07/2020, the 1<sup>st</sup> respondent duly represented by Aretas Stephen Kyala, learned advocate, filed a notice of preliminary objections on five points of law that;

- (a) The application is res judicata contrary to Part 1 section of the CPC as there was the same Misc. Land Application No.662 of

2019 for injunction restraining the 1<sup>st</sup> respondent from entering upon the suit land which was heard and determined for being dismissed with cost on 19<sup>th</sup> June 2020 before hon. Maghimbi, J.

- (b) That the application is overtaken by event.
- (c) The applicant has no locus standi to file this application on behalf of Amina Sultan Beho under the alleged Power of Attorney
- (d) That all affidavits supporting the application are incurably defective for containing prayers and arguments instead of facts contrary to order XIX Rule 3(1) of the CPC
- (e) The verification clause of the affidavits supporting the application is fatal defective contrary to order VI Rule 15(1) and (2) of the CPC.

The application was disposed by way of written submissions. I have much appreciated the well-researched submissions by both sides and my findings are elaborated. On the first objection that this application is res judicata, of Misc. Land Application No.662 of 2019, Mr. Kyala's argument was that this application is res judicata because it was once heard on merit and dismissed with costs. As per the records of this application, indeed the said Misc. Land Application No.662 of 2019 was dismissed for want of prosecution, it was not determined on merits. However, as correctly pointed out by Mr. Sigano, in the previous application the applicant was seeking for restraining orders to restrain the respondents from entering the suit premises and evicting the applicant. However, in the current application, the applicant is praying for eviction of the respondent. The two orders sought cannot be termed as the same cause of action to have

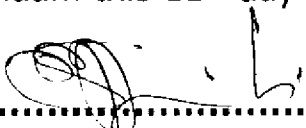
amounted to res judicata. The point of objection lacks merits and it is hereby dismissed.

The 2<sup>nd</sup> objection is that the application is overtaken by events. Mr. Kyara submitted that the order is unmaintainable because the respondent is already on the suit land. Mr. Sigano's reply was just that this objection does not qualify to be determined at the preliminary stage because the point needs the court to peruse the records in order to ascertain.

As per the records, even in her prayers, the applicant admits that the respondent is in possession of the suitland and that is why the prayer is that the applicant is restrained from remaining in the suitland. This order cannot be granted because as correctly argued by Mr. Kyara, the respondent is in possession of the suitland and the applicant wants her to be evicted, something which can be done after determination of ownership of the suitland and not at this initial stage of the suit.

On those findings, the second point of objection is hereby sustained, the application is untenable, for that reason, I need not dwell on the remaining grounds of objection. Being untenable, this application is hereby dismissed, costs shall follow events on the outcome of the main Land Case No. 152/2019.

Dated at Dar es Salaam this 11<sup>th</sup> day of December, 2020

  
.....  
**S.M. MAGHIMBI**  
**JUDGE**

