

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISCELLANEOUS LAND CASE APPLICATION NO. 190 OF 2021

**THE REGISTERED TRUSTEES OF THE
SOCIETY OF THE PRECIOUS BLOOD.....APPLICANT**

VERSUS

**BAKARI SALUM MATANDIKA.....1st RESPONDENT
RAMADHANI SALUM ALLY.....2nd RESPONDENT
JOJI LUKASI HABRAHAM.....3rd RESPONDENT
JAILOS PETER.....4th RESPONDENT**

RULING

Last order & 29/07/21

Masoud, J.

This was an application for contempt of court. The evidence on the basis of which the court was being asked to grant the application was averred in the affidavit deponed by one Chesco Peter Masaga, a principal officer of the applicant. The evidence was essentially hinged on a number of photographs which were annexed to the said affidavit showing what the respondents are alleged to have done on the disputed premise despite the order of this court maintaining the status quo.

The application was contested by the respondents who filed a joint counter affidavit. Among other things, the respondents in their counter affidavit questioned the authority of the deponent to act for the applicant and raised concerns as to the registration status of the applicant. They further attributed the averments of the applicant as to trespass and photographs as hearsay for lack of proof and authenticity.

By way of a reply to the counter affidavit, the applicant introduced some more photographs, showing the alleged trespass and destruction allegedly caused by the respondents. The said photographs were accompanied by affidavit confirming the photographs. The said affidavit was deposed by one, Faustino Paulo Maganga, who claims to have taken the photographs on 12/02/2020, and 20/04/2021. In relation to matters relating to the authority to institute the present application and swearing of the affidavit on behalf of the applicant, it was averred that as long as the affidavit was made under oath, there was no requirement for the affidavit to be sworn by the applicant's principal officer.

When the matter was heard, rival submissions emerged which by and large centred on matters raised in the respective affidavits of the applicant and respondents. In a nutshell, the submissions were based on

the issues whether a case had been made by the applicant for granting the orders sought; whether there was evidence justifying granting of the application for contempt of court; whether the deponent in the affidavit supporting the affidavit had authority to institute the application and swear the affidavit accompanying the application.

Mr William Maro and E. Kilufi, learned counsel for the applicant, argued in the affirmative on the above issues relying heavily on the various photographs that were annexed to the affidavit of the applicant. They thus invited the court to grant the application. On the other hand, Mr Daniel Oduor, learned counsel for the respondents, argued against the application saying that there was no evidence in support of the application. The learned counsel seemed in my considered view to emphasise that the evidence in support of the application was not adduced by a competent person.

Mr Oduor's argument was reinforced by a further argument that the authenticity of the photographs is questionable. He was of the view that the said photographs cannot therefore be relied upon in granting the application. Mr Oduor drew the attention of the court to the contradictory dates, suggesting that the photos were taken on

27/4/2020 before the affidavit supporting the application was verified on 23/04/2021 and the application presented for filing, on 23/04/2021.

On my part, I have had regard to the rival submissions in relation to the affidavits. It was clear to me that the affidavit accompanying the application was indeed sworn by a deponent who deposed that he is a principal officer of the applicant. Although the applicant is a body of the registered trustees and hence a body corporate, there was no averment as to authority given to the said deponent to sue and make an affidavit in support of the application.

There was, in particular, no resolution of the applicant as to her decision to institute the matter and sanctioning the deponent to so act and depone the affidavit. Authority to make this affidavit claimed by the deponent, which was not however supported by any proof, does not necessarily connote authority to institute the present application. In my reasoning in this respect, I was guided by section 8 of the Trustees' Incorporation Act, cap. 318 R.E 2019 as to the effect of incorporation of trustees, and was also inspired by the case of **The Registered Trustees of the Civic United Front (Chama cha Wananchi) vs The Registrar of Political Parties and Others**, Misc. Civil Cause No. 23 of

2016, in which this court observed in relation to the affidavit made in support of the application thus, and I quote:

Although the deponent deposed that he has the authority to make the affidavit in support of the application, the claim was not supported by any resolution of the applicant as the Registered Trustees of the party for the authorization to institute the present proceedings. There was likewise no deposition in the very affidavit as to any resolution of the applicant that authorized the deponent to make the affidavit, let alone the authority to institute these proceedings. Needless to say, authority to make this affidavit which Seif Sharif Hamad claimed to have does not necessarily connote authority to institute this application. There was also no averment that the secretary General of the party was an ex-officio member of the applicant. It would have been proper not to treat this as an issue and assume that the deponent had such authority, if the existence of such authority was not disputed by the respondents in their counter affidavit evidence and the applicant as the Registered Trustees of the party was brought in this matter as a respondent. On the above position of law, see

Pita Kempap Ltd vs Mohamed I.A. Abdulhussein, Civil Application No. 128 of 2004
c/f No. 69 of 2005 CAT DSM (unreported).

The issue of authority was indeed raised in the joint counter affidavit of the respondents. It was, however, not answered in a manner that proved the existence of an authority issued to the deponent by the applicant, a body corporate, having power to sue and be sued in its own name pursuant to section 8 of the Trustees' Incorporation Act (supra). The allegation that the deponent was also a trustee of the applicant came from the applicant's counsel from the bar, without there being any averment in that respect in the affidavit, let alone a proof from the relevant authority for registration of trustees.

In addition to the authority of **Ilela Village Council vs Answaar Muslim Youth Centre and Another**, Civil Appeal No. 317 of 2019, which show how an action by a registered body may be instituted, there were also **The Registered Trusteed Trustees of CCM versus Mohamed Ibrahim Versi and Sons & Another** Civil Appeal No. 16 of 2008 CAT ZNZ (unreported); **The Registered Trustees of Democratic Party vs The Registrar of Political Parties and**

Another, Misc. Cause No. 92 of 2017 HC Main Registry Dar (unreported) in relation to incorporation of trustees and the effect of such incorporation on power to sue. In other words, the authorities albeit indirectly dealt with the issue as to who may swear an affidavit for such a registered body and how, and the duty of the court when the authority of a deponent is contested. Notably, these authorities are over and above those which I have already herein above considered in great detail.

On a different note, the affidavit evidence relied on by the applicant is characterized by a set of photographs which upon being challenged by the respondents, the applicant introduced a new set of evidence to fill the identified gaps. The new set of evidence was characterized by, firstly, new photographs and, secondly, an affidavit of a person who claimed to have taken the photographs on two different dates. The question is whether the evidence as to the photographs is cogent to justify granting the application and entering the order sought in the chamber summons.

In my resolve, the evidence characterizing the affidavit supporting the application is wanting in many respects of contradictions, which in my

view, dent the credibility of the deponent and the weight of the adduced evidence. The contradiction on the dates on which the photographs were allegedly taken cannot be ignored. The contradiction is herein above clearly captured by Mr Oduor's submissions. It was however not cleared by any plausible statement in the affidavit, reply to the counter affidavit or the submissions by applicant's counsel.

It is clear that the contradiction goes to the root of the matter. In effect, the contradiction dents the credibility of the deponent and weight of the evidence in the purported affidavit on the record as already pointed out. The dates as to when the photographs were taken set out in the affidavit as to confirmation of the photographs complicated the matter even further. Not only did the reply to the counter affidavit bring new dates which were not alleged in the affidavit supporting the application, but also it failed to provide plausible explanation to clear the contradiction as to the dates. As indicated earlier, the date appearing on the very photographs suggests that the present application was filed before the photographs were taken.

In sum, I would, in view of the above observations and findings, find that there is no evidence adduced on the record to support the

application and granting of the reliefs sought by the applicant in the chamber summons. The reliefs sought included summoning the respondents to appear and show cause why they should not be committed as civil prisoners for disobeying the court order dated 8/04/2021, and issuing demolition order against the respondents in respect of structures the respondents are alleged to have erected in the disputed premise. I am prepared therefore to dismiss the application for the reasons shown.

In the upshot, the application is hereby dismissed for lack of merits. In the circumstances, the respondents are awarded costs.

It is so ordered.

Dated and Delivered at Dar es Salaam this 29th July 2021.


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B. S. Masoud
Judge

