IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 487 OF 2021

(Originating from Land Case No. 154 of 2021)

CHRISTINE HARIETH MULOKOZI
(The Administrator of the Estate of the Late
ERNEST ABEL MULOKOZI) .....APPLICANT

VERSUS

DAVID CAROL NCHIMBI..... RESPONDENT

R U L I N G

Date of last order: 20/10/2021

Date of Ruling: 26/10/2021

A. MSAFIRI, J:

The applicant, under certificate of urgency, moved this court by way of chamber summons seeking an order for a temporary injunction restraining the respondent whether by himself, his servants, employees or agents or otherwise from selling or in any other way whatsoever from interfering with ownership of Plot No. P13745 Magogoni Area Dar es Salaam.

The application was heard ex-parte when the respondent failed to appear before the court after being summoned twice, and it was proved that he had received and signed the summons. The ex-parte hearing was

conducted orally and the applicant was represented by Mr. Simon Rodrick Mawalla, learned advocate.

However, before the hearing of the Application, the Court noted that, there was no citation of any provision of law in the Chamber Summons under which this Application is preferred. On that observation, the court directed Mr. Mawalla to address the court on the position of Application which has been brought under a defective chamber summons.

Mr. Mawalla conceded that there are defectiveness in the Application whereas there is non-citation of the law. He prayed for the leave of the Court to withdraw the application so that it can be refiled properly. He admitted that in the present situation, the Court has not been properly moved.

It is legal position that, non-citation or wrong citation of the law renders the Application incompetent before the court. There are numerous authorities which has elucidated on this position. Among those cases is the case **of Mgonja vs. The Trustees of the Tanzania Episcopal Conference,** Civil Revision No. 2 of 2002 (AR), the Court of Appeal held as follows:

> *"If a party cites the wrong provisions of the law the matter becomes incompetent as the Court will not have been properly moved".*

In yet another case of **Robert Leskar vs. Shibesh Abebe,** Civil Application No. 4 of 2006 (unreported), the Court of Appeal had this to say on the matter:

"It is equally settled law that non citation of the relevant provisions in the notice of motion renders the proceeding incompetent."

Similar stance was also taken in **China Henan International Cooperation Group v. Salvand K.A. Rwegasira** [2006] TLR 220, **Anthony Tesha vs. Anita Tesha,** Civil Appeal No. 10 of 2003; and **Fabian Akonaay vs. Matias Dawite**, Civil Application No. 11 of 2003.

In my humble opinion, failure by the applicant to cite the proper law under which the application is preferred is a serious omission. It is not a simple matter of correcting the omission or a technical matter that warrants the Court to invoke the principle of overriding objective. The omission to cite the proper law or non-citation of the law goes to the root of the case. In the present matter, the omission is grave because there was no any citation of the law as the chamber summons was blank.

For this reason, I find the Application incompetent for non-citation of law and hereby struck it out without costs but with leave to refile.

Order accordingly.

A. MSAFIRI
JUDGE
26/10/2021