

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

MISC LAND APPLICATION NO. 659 OF 2020

REV. PETER PETER JUNIOR.....APPLICANT

VERSUS

**DICKSON SHABAN MAKAMBA.....1ST RESPONDENT
TIGO TANZANIA LIMITED.....2ND RESPONDENT
AIRTEL TANZANIA LIMITED.....3RD RESPONDENT
HUSSEIN ALLY SALUM.....4TH RESPONDENT**

Date of Last Order: 15.11.2021
Date of Ruling: 10.12.2021

RULING

V.L. MAKANI, J

This ruling is in respect of the preliminary objections raised by the 1st respondent namely, DISCKSON SHABANI MAKAMBA that:

- 1. The Honourable Court has not been moved properly.*
- 2. Affidavit supporting application is fatally defective for containing defective jurat of attestation.*

The preliminary objection was argued by way of written submissions.

Submissions on behalf of the 1st respondent was drawn and filed by

Mr. Adrian Mhina, Advocate. The applicant did not file submissions in reply and so the matter proceeded ex-parte against him..

Mr. Mhina argued that, the applicant's prayer is for the court to set aside the dismissal order in Land Case No.292 of 2016 dated 07/06/2017. That the applicant's prayer is under Order IX Rule 9(1) of the Civil Procedure Code, CAP 33 RE 2002. He maintained that Order IX Rule 9(1) of the Civil Procedure Code, Cap 33 RE 2002 is for setting aside ex-parte judgment and not for setting aside a dismissal order. Further, Item 31 of the Schedule to GN. No. 140 of 2020 is to the effect that the Civil Procedure Code, Cap 33 RE 2002 shall be cited as **CAP 33 RE 2019** and not **CAP 33 RE 2002** as cited by the applicant. Mr. Mhina relied on the case of **Iddie Mwinyi vs. National Bank of Commerce & Misngeme Mbitu [2001] TLR 83**. Mr. Mhina did not submit on the second point of preliminary objection, he thus prayed for the application to be struck out with costs.

The main issue for consideration is whether the preliminary objection raised by the 1st respondent has merit. It is apparent that Revised Edition 2002 is no longer in existence. This application was made

under Order IX Rule 9(1) of the Civil Procedure Code CAP 33 RE 2002. It is common knowledge that by virtue of the General Laws Revision Notice, 2020, the laws specified in the Schedule to the Notice were revised and published as **2019 Revised Edition** which included amendments of up to November, 2019. The **2019 Revised Edition** supersedes all previous Revised Editions in respect of the laws specified in the Schedule. The Civil Procedure Code, 1966 CAP 33 is listed as among the revised laws in the **2019 Revised Edition**. In that respect, the cited provision of Order IX Rule (1) of Civil Procedure Code, 1966 CAP 33 RE 2002 does not exist as it has been superseded by the **Civil Procedure Code, 1966 CAP 33 RE 2019**. Consequently, this court has not been conferred with any jurisdiction to entertain the matter as the provision cited is under non-existing laws.

The court may have invoked the overriding principle to cure the error, but unfortunately, Order IX Rule 9(1) of the Civil Procedure Code CAP 33 RE 2002 does not exist in the current Civil Procedure Code CAP 33 RE 2019. In other words, in the new Revised Edition of 2019 Order IX Rule 9(1) is not in existence at all.

For the reasons above, the preliminary objection has merit to the extent stated above. The application is therefore struck out with costs.

It is so ordered.

V.L. Makani
V.L. MAKANI
JUDGE
10/12/2021

