

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

AT DAR ES SALAAM

MISC.LAND APPLICATION NO. 373 OF 2020

(Originating from the decision of Extended Land Appeal No. 29 of 2019, The Resident Magistrates 'Court of Dar es Salaam Extended Jurisdiction which originated from the decision of Temeke District Land and Housing Tribunal in Land Application No. 268 of 2016.

RAJABU OMARY MKWAMA.....APPLICANT

VERSUS

ADAM ALLY BWAKA..... RESPONDENT

RULING

15/09/2021 & 21/10/2021

Masoud, J.

In the course of submissions, the counsel for the applicant told the court that although the applicant did not properly move the court for not citing S.47(2) OF Cap 216 R.E.2019, the defect is curable since the substantive section (ie S.47 OF Cap 216 R.E 2019) was cited. To fortify this submission I was referred to the Court of Appeal decision (unreported) i.e **Joseph Shumbusho V.Mary Grace Tigerwa**, Civil App. No. 183 of 2016 CAT (Dar es Salaam). The copy of the decision was however not availed to the court or to the respondent who was an unrepresented lay person.

In his reply, the respondent not have much to say other than adopting his counter affidavit to form part of his submissions. In my scrutiny, I was clear that the chamber summons cited "...S.47(1) and (3) of the Land Disputes Courts Act, No. 2 of 2002 (Cap. 216 R.E 2002) of the Principal Legislation."

Clearly, the proper provision, namely, S.47(2) of the Land Disputes Courts Act, Cap 216 R.E 2019 was not cited. Indeed, the court has not been properly moved in respect of the orders sought.

Section 47(1) & (3), if we assume that Cap 216 R.E 2002 cited is not fatal, does not relate to power of this court to grant leave in respect of matters originating from the District Land and Housing Tribunal. The argument of the counsel for the applicant that the non-citation is not fatal as the applicant has nonetheless cited the substantive section of the law has in my view no basis. I say so as the provision is clear as to subsections mentioned and specified. The same conflicts each other if they are considered in the light of this application.

It is settled law that non - citation or wrong citation renders an application incompetent. This position of the law equally fits into the present application. I need not cite any authority. As the application is incompetent, there is no application to be attended before me.

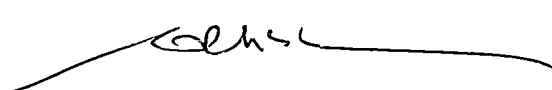
In the end, the application is struck out for the above reasons. The respondent is awarded costs. Ordered accordingly.

Sgd. B.S. MASOUD

JUDGE

21/10/2021

COURT: Ruling delivered in the presence of the counsel for the applicant and the respondent in person this 21/10/2021.



B.S. MASOUD

JUDGE

21/10/2021

