

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

MISC. LAND CASE APPLICATION NO.435 OF 2022
(Arising from Land Case No. 184 of 2022)

JAMAL ABDALLAH TAMIM.....APPLICANT

VERSUS

HASSAN ABDALLAH SUBET (The Administrator of the Estate of the late
SALIM SUBET SALIM)RESPONDENT

R U L I N G

Date of Last Order: 04.08.2022

Date of Ruling: 25.08.2022

T. N. MWENEGOHA, J.

The application was brought under Order XXXVII Rule 1 & 2, and Section 95 of the Civil Procedure Cap 33 R. E. 2002. It was supported by the affidavit of Jamal Abdallah Tamim, the applicant herein above.

Basically, the applicant prayed to this court to issue an order of injunction against the respondent, and any person working or acting under his instructions, from disposing in whatever manner the suit property, Located at Plot No. 11, Block 66, Kariakoo area, within Ilala District and Dar es Salaam Region, with a Certificate of Title No. 54425, until the applicant receives Unit Title or declared rightful owner of half share of the suit property.

The respondent on the other hand has objected the application on point of law to the effect that, the application is defective for wrong citation of the enabling provision of law and also for being supported by a defective affidavit. Mr. Leonard Manyama, learned counsel for the respondent has insisted in his written submissions that, the law cited in the chamber summons is non existing. That is Cap 33 R. E. 2002 instead of R. E. 2019. This is to say, the application at hand was brought under a dead law. To him that defect is fatal and renders the application be struck out as it amounts to wrong citation of the law. He cited the case of **Edward Bachwa and 3 Others versus The Attorney General and Another, Civil Appeal No. 123 of 2006, Court of Appeal of Tanzania, (Unreported)**.

On the 2nd objection on the defective affidavit, it was argued that, the said affidavit does not have the name, age, place of residence or religion of the deponent. These are important facts that need to be stated by the deponent before he starts giving his evidence in the affidavit. The affidavit in question violates the provisions of Order VI Rule 15(2) of The Civil Procedure Code, Cap 33 R. E. 2019 and also the rules given in **CALICO Textile vs. Zenon (1999) TLR 100**.

In reply, Mr. Erick Maginge, learned counsel for the applicant conceded to the 1st objection, that there is an improper citation of law in the chamber summons. However, the defect is curable and does not make the whole application incompetent as stated in **Bin Kuleb Transport Co. Ltd vs. Registrar of Tittles and 3 Others, Civil Application No. 522/17 of 2020, Court of Appeal of Tanzania, at Dar es Salaam, (unreported)**.

As for the defect in the affidavit, the applicant's counsel maintained that, the respondent has failed to show which law was offended by the affidavit in question. He insisted that, the defect on the affidavit is also curable, considering the fact that, the application at hand originates from the main case, which is Land Case No.184 of 2022.

Having gone through the submissions of parties, the question in need of answers is whether the two objections by the respondent have merits or not.

For the first objection, both parties agree that there is an improper citation of the law. What they differ is on the outcome of it as far as the application is concerned. The respondent's counsel views the defect to be fatal hence affecting the competence of the application at hand. The applicant's counsel on his part, saw the defect as a minor one which is curable as it is just a mere slip of the pen.

On my part, I am in line with the respondent's counsel. that, the chamber summons is defective beyond repair. One cannot call the said defect as a mere slip of the pen. We are all aware that, the Revised Edition of Laws of 2002 ended upon the new Revision of the same in 2019. Therefore, one cannot bring a case under the laws which are no longer applicable. That is to say, the court was improperly moved owing to the improper citation of the enabling law. It has been settled already that, improper citation of the law or provision of the law renders the application to be incompetent, see **Edward Bachwa and 3 Others**, (supra). The same rules will apply to determine the competence of the application at hand. That is to say, the 1st objection has been allowed as it has merits.

I see no need to proceed and determine the 2nd objection which is also on defects on the affidavit, allowing the 1st objection is enough to dispose the application.

Eventually, the application struck out with costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
25/08/2022