

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
EXECUTION NO. 58 OF 2022**

**BETWEEN**

**EVANS FRANK..... APPLICANT/DECREE HOLDER**

**VERSUS**

**SAFI MSAFIRI MTUMBI@  
MAMA SIMBA .....RESPONDENT/JUDGMENT DEBTOR**

**RULING**

*27/09/2022 & 11/10/2022*

**A. MSAFIRI, J.**

On 04/7/2022, the applicant instituted an application for execution of a decree. It was filed under Order XXI Rule 10 (1) of the Civil Procedure Code, Cap 33 R.E 2019. In the application, the applicant as a decree holder was seeking for the Court's order of execution of this Court's award emanating from Land Case No. 292 of 2015 before this Court, against Safi Msafiri Mtumbi @mama Simba (the judgment debtor/the respondent). Before hearing of the application, the respondent raised a preliminary objection on point of law to the effect that this application is incompetent for being brought under non existing law. *Adde*

Submitting on the raised preliminary objection, Ms. Shukuru Banzi, learned advocate for the applicant stated that they concede to the raised preliminary objection and prayed for the amendment of the application. She said further that she intends to file in Court the amended application.

Mr. Wandiba, learned advocate for the respondent submitted that, the counsel for the applicant has conceded that the application is incompetent before the Court. That since the application is incompetent, the remedy available is for the same to be struck out. That the application can not be amended since the raised objection is on point of law.

After hearing submissions on both parties, it is clear that the applicant has conceded to the preliminary objection raised by the respondent.

It is trite law that the remedy of incompetent application before the Court is for the same to be struck out. (See the Court of Appeal case of **Noel Palangyo vs. Tanga Cement Co. Ltd**, Civil Application No. 4 of 2015 (CAT-Unreported).

I therefore hold that the application has been brought under wrong provision of the law and the remedy is not to amend the application but to strike it out. *Adls.*

The preliminary objection raised by the respondent is sustained and the application is hereby struck out with no order as to the costs.



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**A. MSAFIRI**  
**JUDGE**  
**11/10/2022**