

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

MISC. LAND CASE APPLICATION NO. 269 OF 2021
(Originating from Land Case No. 4 of 2012)

JOWHARA CASTOR KIIZA.....APPLICANT

VERSUS

ACER PETROLEUM (T) LIMITED.....1ST RESPONDENT

JAFFER HASSANLI VIRJI.....2ND RESPONDENT

**FATUMA MUZAMMIL (Legal representative of the late
MUZAMMIL SHEIKH HASSAN.....3RD RESPONDENT**

MAC CONTRACTORS CO. LIMITED.....4TH RESPONDENT

R U L I N G

Date of Last Order: 09.02.2022

Date of Ruling: 22.03.2022

T. N. MWENEGOHA J.

The application was brought under section 97 of the Civil Procedure Act, R.E 2019, accompanied by the affidavit of the applicant here in above, Jowhara Castor Kiiza. He is in fact seeking to correct an order of this court. Initially, this application follows a previous application of this nature which was before Hon. Opiyo J, vide Misc. Land Case Application No. 1141 of 2017. The applicant was successful in moving the court for an order to for correcting some clerical mistakes contained in a drawn order, given by Wambura J, in Land Case No. 4 of 2012, dated 2nd December, 2016, here in after called the original order. Unfortunately, when the drawn order of

Opiyo J was issued on 22nd December 2020, here in after called the corrected, appeared to have other clerical mistakes which now the applicant seeks for another order to correct the same.

The application was heard was heard by way of written submissions. The applicant appeared in person while the 1st, 2nd and 4th respondents enjoyed the legal services of Advocate Gwamaka Mwaikugile. However, when going through the submissions filed by Mr. Gwamaka as reply for the 1st, 2nd and 4th respondents, I noted the same to have not been signed by the drawer who is Mr. Gwamaka. Furthermore, it contains no filling date and also the signature of the registry officer including the seal of the court is not there. Being found with such defects, the same were expunged from records, hence the case was heard ex-parte against 1st, 2nd and 4th respondents. Either, the 3rd didn't file her written submissions, hence the case was heard ex-parte against her too.

In her submissions in favour of the application, the applicant maintained that, the corrected order of Opiyo J contains clerical errors that need to be corrected again by this court. That the said orders contain words that were not part of the original order of Hon. Wambura J, as shown under paragraphs 4-10 of the affidavit in support of the application. That, on the face of it, the corrected order by Opiyo J, is at variance with the original order of Wambura J., hence allowing this application is inevitable in order to correct the noted errors.

Having gone through the submissions of the applicant in line with the affidavit and counter affidavits in support and against this application. The issue for determination is whether the application has merits or not.

In answering the questioned here in above, I went through the records, particularly the two drawn orders, the original one by Wambura J and the corrected order of Opiyo J, I found some minor mistakes worth of corrections. The only mistake that needs to be corrected in my opinion is the word 2nd defendant appearing in the last paragraph of the corrected order. The same should be 1st defendant as appearing in the original order.

However, other highlighted mistakes in my view do not need corrections. In her submissions, the applicant wants the highlighted words reading "**AND UPON**", as appearing in the last three paragraphs of the corrected order be removed, as they were not part of the original order. I agree with her on the fact that the said words were not part of the original order, but including the same in the corrected order has not changed anything on it as far as the meaning of the said paragraphs is concerned. The same has not in any way prejudiced the rights of the parties in the said order. But since she has requested the correct order to appear with the same content and form with the original order, I find no problem on this.

Therefore, her application is allowed for being meritorious. Let the corrected drawn order be issued accordingly.

No order as to costs.

Dated at Dar es salaam this **22nd** day of **March, 2022.**



T. N. MWENEGOHA
JUDGE