

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

**MISC. LAND APPLICATION NO. 609 OF 2021**

**RAWASI SECURITY SERVICES LTD ..... APPLICANT**

**VERSUS**

**RAYMOND FOCUS MLAY ..... 1<sup>ST</sup> RESPONDENT**

**KCB BANK TANZANIA ..... 2<sup>ND</sup> RESPONDENT**

**DOREEN HURUMA MAWOLE also known as  
DOREEN ALBERT TEMU ..... 3<sup>RD</sup> RESPONDENT**

**EVANS GENERAL TRADERS ..... 4<sup>TH</sup> RESPONDENT**

**MEM AUCTIONEERS & GENERAL**

**BROKERS LTD ..... 5<sup>TH</sup> RESPONDENT**

**FURAHINI JOSEPH LEMA ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

Date of Last Order: 28.01.2022

Date of Ruling: 07.02.2022

**A.Z.MGEYEKWA, J**

The applicant has filed a Chamber Summons accompanied by an affidavit. The application was brought under Section 95 and Order I Rule 10 (2) of the Civil Procedure Code Cap.33. The application was supported

by an affidavit deponed by Saimon Onesmo Stephen, Principal Officer of the applicant. The 1<sup>st</sup> respondent feverishly opposed the application and filed a counter-affidavit sworn by Mr. Raymond Focus Mlay, the 1<sup>st</sup> respondent. The 6<sup>th</sup> respondent also filed a counter affidavit deponed by Furahini Joseph Lema.

When the matter was called for hearing, the applicant had the legal service of Mr. Madundo, learned counsel, the 1<sup>st</sup> respondent enjoyed the legal service of Mr. Ndanu Emmanuel, learned counsel, and the 6<sup>th</sup> respondent had the legal service of Mr. Godwin Musa, learned counsel.

In support of his application, the learned counsel for the applicant urged this court to grant an order to allow the applicant to join as a party in Misc. Land Application No.498 of 2021. Mr. Mdundo prayed for this court to adopt the applicant's affidavit to form part of his submission. The learned counsel for the applicant submitted that the application emanates from the relationship between the applicant and Furahini Joseph Lema, the 6<sup>th</sup> respondent. They have entered into a one-year lease agreement starting from 16<sup>th</sup> September, 2021 to 16<sup>th</sup> September, 2022. He submitted that the 6<sup>th</sup> respondent introduced himself as a lawful owner of the suit landed property through public auction. Mr. Mdundo contended that the applicant occupied the suit landed property on 16<sup>th</sup> September, 2021, and on 22<sup>nd</sup>

October, 2021 someone posted a paper on the fence wall of the suit landed property. He added that the applicant noted that the same was a copy of a case issued by this court. The learned counsel for the applicant went on to submit that the 6<sup>th</sup> respondent informed the applicant that there is a pending application before this court. Mr. Mdundo went on to submit that when the matter was called for hearing in court, the applicant wanted to submit but he was restrained to do so because he was not a party to the application.

The learned counsel for the applicant continued to submit that the applicant has an interest in the suit landed property because he is the tenant of the 6<sup>th</sup> respondent thus they pray to be a join as a party in Misc. Land Application No. 498 of 2021. The main reason to join as an interest party is that they are afraid this court might issue an order which will affect the applicant. He added that the law requires an interested party to be afforded a right to be heard. Fortifying his position he cited Article 14 of the Constitution of the United Republic of Tanzania and the case of **Attorney General v National Housing Corporation & 3 others**, Civil Application No. 432/17 of 2017.

On the strength of the above submission, Mr. Mdundo beckoned upon this court to grant the applicant's application.

Responding, Mr. Ndanu urged this court to adopt the counter affidavit of the 1<sup>st</sup> respondent to form part of his submission. The learned counsel for the 1<sup>st</sup> respondent started by challenging the legality of the applicant's affidavit. He contended that the applicant has stated that the owner of the house in dispute informed the applicant that he purchased the suit landed through public auction. Mr. Ndanu stated that the applicant received the said information from another person and in his verification clause the applicant did not mention if he received the information from Furahini. Supporting his submission, he referred this court to paragraphs 4 and 6 of the applicant's affidavit.

He went on to submit that the applicant in his affidavit stated that the applicant on 23<sup>rd</sup> September, 2021 wanted to address the court while on that particular date this court did not conduct any proceedings. He urged this court not to consider the untruth information made by the applicant. Supporting his position he cited the case of **MIC Ltd v Hamisi Mwinyijuma & Abwenr Isaya**, Misc. Civil Application No.222 of 2018.

Submitting against the application, Mr. Ndanu contended that the applicant entered into an agreement with the 6<sup>th</sup> respondent on 16<sup>th</sup> September, 2021 whereas the house is situated in Plot No. 548 Block N, Tangi Bovu at Mbezi area is claimed to belong to the 1<sup>st</sup> respondent. He added that the applicant claims that he started to occupy the said house on 16<sup>th</sup> September, 2021. To buttress his submission Mr. Ndani referred this court to paragraph 6 of the affidavit. he went on to state that the applicant complained that he was still occupying the said house on 16<sup>th</sup> September, 2021 before he was legally been evicted by the 1<sup>st</sup> respondent is doubtful since the 6<sup>th</sup> respondent on paragraph 4 of his counter-affidavit claimed that the order of this court was issued when the 1<sup>st</sup> respondent was evicted without stating who evicted him and when exactly the 1<sup>st</sup> respondent was evicted.

The learned counsel for the 1<sup>st</sup> respondent continued to submit that the applicant claims that he has interest in the suit landed property, however, the 6<sup>th</sup> respondent did not submit any tangible evidence to show if he is the lawful owner of the suit landed property. It was his opinion that the 6<sup>th</sup> respondent had no legal document to prove that he can pass any interest over the suit landed property to the applicant that can be protected by the court. Mr. Ndanu distinguished the cited case by Mr. Madundo in the sense

that the applicant is not involved in the paramount issue in the main suit, the issues of ownership of property, sale, purchase, and mortgage of the said property. He added that the applicant cannot be aggrieved by the court orders since he is not the owner of the suit property. Stressing on the point, Mr. Ndanu argued that the determination of Misc. Land Application No.498 of 2021 cannot affect the applicant.

On the strength of the above submission, Mr. Emmanuel beckoned upon this court to dismiss the applicant's application.

The learned counsel for the 6<sup>th</sup> respondent ended up supporting the applicant's application. He urged this court to adopt the 6<sup>th</sup> respondent's counter-affidavit and form part of his submission. Mr. Musa submitted that the applicant by being a tenant has an interest in Misc. Land Application No. 498 of 2021 and that he had an agreement with the 6<sup>th</sup> respondent. He went on to submit that the issue of ownership is yet to be determined by this court thus at the moment the court has to protect the right of any individual by giving him a chance to be heard. To support his stand he cited the case of **Ndesamburo v Attorney General**, Misc. Civil Cause No.12 of 1995 TLR (1995).

In his rejoinder, the applicant's Advocate reiterated his submission in chief. He further submitted that the issue of affidavit being incompetent is a pure point of law and the same was required to be raised before hearing the instant application on merit. Stressing on the point, Mr. Mndudo submitted that the applicant wants to join in the Misc. Land Application No. 498 of 2021 since he is the 6<sup>th</sup> respondent's tenant and residing on the suit landed property. Mr. Mdundo did not want to argue on the issue of ownership, for the reason that the applicant is just a tenant.

On the strength of the above submission, the learned counsel for the applicant insisted that the applicant has interest in the suit landed property thus he urged this court to offer the applicant a chance to be heard.

I have given careful deliberation to the arguments for and against the applicant's application herein advanced by all learned counsels. In tackling the instant application, I think I will not be detained by it. The central issue for consideration and determination is ***whether the application is meritorious.***

Before generally canvassing the applicant's request, I have dispassionately considered the so-called preliminary point of objection. Mr. Ndanu tried to move this court by raising a point of objection that the

applicant's affidavit contains information. With due respect to Mr. Ndanu, I do not think most of what he terms as a preliminary point of objection has been raised at the right instant.

I am in accord with the learned counsel for the applicant that Mr. Ndanu was supposed to follow proper procedure, in case the 1<sup>st</sup> respondent wanted to challenge the applicant's affidavit then he was supposed to challenge the same by raising a preliminary objection before hearing of the application.

For the aforesaid reasons, the 1<sup>st</sup> respondent's point of law is disregarded. Therefore, I proceed to determine the application on merit.

I have scrutinized the affidavit of the applicant and the submission made by all learned counsel and without wasting much time of the court, I have to say that the applicant's application has merit. In the circumstances of the case at hand, the applicant is the tenant of the 6<sup>th</sup> respondent and the said house is in dispute. I understand that the applicant is not the buyer but this court order in respect to Misc. Land Application No. 498 of 2021, might affect the tenants who are occupying the suit land. I have also considered the fact that the law requires for a person who has an interest



in a subject matter to be allowed to defend himself and the court to determine his defence before making its decision.

In the cited case of **Attorney General v National Housing Cooperation** (supra), the Court of Appeal of Tanzania observed that it was appropriate to allow the applicant to join a case and accord him the opportunity to be heard on the application. Guided by the authority of the Court of Appeal of Tanzania in the case of **Attorney General v National Housing Cooperation** (supra), I find that as long as the applicant has shown interest in the said application, he deserves to be afforded a right to join as a party and be heard in the Misc. Land Application No. 498 of 20121. Regardless that he is not a party in Land Case No. 126 of 2021 and he has no interest in ownership of the suit landed property. I have also considered that parties including the applicant will be bound by the court decision. Therefore, in the interest of justice, the applicant is given an opportunity of being heard.

In the upshot, the applicant's application has merit, the applicant is allowed to join as a party in Misc. Land Application No. 498 of 2021. The application is granted. No order as to the costs.

Order accordingly.

DATED at Dar es Salaam this 7<sup>th</sup> February, 2022.



  
A.Z.MGEYEKWA

**JUDGE**

07.02.2022

Ruling delivered on 7<sup>th</sup> February, 2022 in the presence of Mr. Madundo, learned counsel for the applicant, Mr. Ndanu Emmanuel, learned counsel for the 1<sup>st</sup> respondent, and Mr. Musa, learned counsel for the 6<sup>th</sup> respondent.



  
A.Z.MGEYEKWA

**JUDGE**

07.02.2021