

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 337 OF 2022**

(Arising from Land Case No. 80 of 2022)

**MABROUK OMAR MOHAMED ..... APPLICANT**

**VERSUS**

**EXIM BANK TANZANIA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**JOSHUA MWITUKA t/s FOSTER AUCTION MART .... 2<sup>ND</sup> RESPONDENT**

**FABIAN JOHN FIMBO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

*Date of Last order: 20.07.2022*

*Date of Ruling: 20.07.2022*

**A.Z. MGEYEKWA, J**

This application was lodged under Certificate of Urgency on 27<sup>th</sup> June, 2022. The application is brought by way of Chamber Summons under Order XXXVII Rule 1(a) of the Civil Procedure Code, Cap 33 [R.E. 2019] and section 51 (1) of the Land Disputes Courts Act, Cap. 216 [R.E. 2019].

It is supported by an affidavit deponed by Mr. Mabrouk Omar Mohamed, the Applicant. The applicant has set out the grounds on which an extension of time is sought. The respondent has stoutly opposed the application by filing a counter-affidavit deponed Edmund Aaron Mwasaga, Principal Officer for the 1<sup>st</sup> respondent, and Fabian John Fimbo, the 3<sup>rd</sup> respondent, the learned counsel for the respondent.

When the matter was called for hearing on 20<sup>th</sup> July, 2021 when the matter came for hearing, the applicant enlisted the legal service of Mr. Julius MaManjeka, learned counsel, the 1<sup>st</sup> and 2<sup>nd</sup> respondents enjoyed the legal service of Mr. Lucas, learned counsel and the 3<sup>rd</sup> respondent has the legal service of Ms. Christabela, learned counsel.

Before hearing the matter on merit, Mr. Lucas claimed that the application has no leg to stand because there is no pending case, he stated that Land Case No. 80 of 2020 was dismissed on 9<sup>th</sup> July, 2022 for want of prosecution hence, the instant application cannot stand in the absence of the main case.

Ms. Christabella, learned Advocate for the 3<sup>rd</sup> respondent contended that the main suit was dismissed on 9<sup>th</sup> July, 2022, therefore, she submitted that the instant application is redundant.

On his part, the learned counsel for the applicant opposed the 1<sup>st</sup> respondent's prayer. Mr. Julius claimed that although the Land Case was dismissed but immediately, the applicant filed an application to set aside the dismissal order he urged this court to stay the hearing of this application until the determination of the application to set aside Land Case No. 80 of 2022.

In his rejoinder, Mr. Lucas learned advocate for the 1<sup>st</sup> respondent, reiterated his submission in chief. He stated that so long as the main suit is not in place, then, this court cannot stay the application, therefore, it was his view that the instant application has no legs to stand.

Having heard the submissions of learned counsels, from the outset, I fully subscribe to the submission made by the respondents' learned counsels. The record reveals that the applicant lodged the instant application for temporary injunction before this Court on 27 June, 2022 when the Land Case No. 80 of 2020 was pending before this court. This court on 9<sup>th</sup> July, 2022 dismissed the Land Case No. 80 of 2020 for nonappearance of the Plaintiff. Therefore, I am in accord with the learned counsels for the respondents that as long as there is no pending suit, the instant Misc. Land Application No. 337 of 2022 cannot be termed as a proper application before this court.

For the aforesaid reasons, I proceed to strike out the Misc. Land Application No. 337 of 2020 without costs.

Order accordingly.

Dated at Dar es Salaam this date 20<sup>st</sup> July, 2022.



  
A.Z.MGEYEKWA  
**JUDGE**  
20.07.2022

Ruling delivered on 20<sup>th</sup> July, 2022 via video conferencing whereas both counsels were remotely present.



  
A.Z.MGEYEKWA  
**JUDGE**  
20.07.2022