

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 60 OF 2023**

BETWEEN

LABCON TANZANIA LTD APPLICANT

VERSUS

**THE NATIONAL HOUSING CORPORATION (NHC)1ST RESPONDENT
THE ATTORNEY GENERAL 2ND RESPONDENT**

RULING

Date of last Order: 09/3/2023

Date of Ruling: 20/03/2023

A. MSAFIRI, J.

This Application was brought under Section 2(3) of the Judicature and Application of the Laws Act, Cap. 358 R.E 2019 read together with Section 68 (e) and 95 of the Civil Procedure Code, CAP 33 R.E 2019.

The Application was supported by the affidavit of one Cornelia Johanna Felten, the majority shareholder of the applicant. The respondents filed their joint counter affidavit contesting the Application. Along with it, the respondents filed a Notice of Preliminary objection to the effect that;

Alls-

1. The application is incompetent and untenable at law for being supported by an incurably defective affidavit.

On 20/3/2023, the matter was set for hearing of a preliminary objection. The applicant was represented by Mr. Ferdinand Makore, learned advocate. The respondents were represented by Mr. Edwin Joshua Webiro, Ms. Debora Mcharo and Ms. Lilian Mirumbe, State Attorneys.

Mr. Makore addressed the Court on the raised preliminary objection and stated that, having gone through the objection raised together with the affidavit, he is conceding to the raised preliminary objection.

He said that, he concedes on the same for the reason that it is true that the person who appears to swear an affidavit that is Cornelia Johanna Felten, is different from the person who deposed before the Commissioner for Oath, that is Ilona Lawrence Kadri.

Mr. Makore said further that this was due to a clerical error or a slip of the pen. He prayed for the Court not to condemn the applicant for costs as they have readily conceded to the errors, and prayed for the Application to be struck out without costs.

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Mr. Webiro, responded that it is clear as admitted by the counsel for the applicant that the application is supported by a defective affidavit. That, since the applicant through his counsel has conceded, then the respondents are not pressing for the costs.

He prayed for the application to be struck out with costs.

Having heard the submission from the counsels of parties, I have gone through the affidavit and I am satisfied that the affidavit supporting the application is incurably defective.

While the said affidavit was sworn by Cornelia Johanna Felten, the same was deponed before the Commissioner for Oath by one Ilona Lawrence Kadri who is not even a party to this Application.

Since the applicant has readily conceded to the defectiveness, the only remedy is to strike out the Application.

I proceed to struck out this Application with no order for costs.



A. MSAFIRI
JUDGE
20/3/2023



THE HIGH COURT OF BOTSWANA
LAND DIVISION