

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 214 OF 2023
(Arising from Application No. 188 of 2023)

1. CHRISTINE DAVID
2. YUSUF ABDALLAH NASSIR
3. JOHN KIMARO

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..... **APPELICANTS**

VERSUS

MAX STEPHEN COLBERT **RESPONDENT**

RULING

Date of last Order: 28.04.2023

Date of Ruling: 28.04.2023

A.Z.MGEYEKWA, J

On 3rd April 2023, the applicant herein instituted this application against the respondent. The application is made under the certificate of urgency through Chamber Summons accompanied by an affidavit. The application was brought under Order XXXVII Rule 1 (a) and sections 68 (e) and 95 of

the Civil Procedure Code Cap.33 [R.E 2019]. The application is supported by an affidavit deposed by Sigano Antoni, the applicant's counsel. The respondent opposed the application by filing a counter-affidavit deposed by Philemon Mujumba, counsel for the respondent.

When the matter was placed before me for hearing on 28th April 2023 the applicants enjoyed the legal service of Mr. Sigano Antoni, learned counsel whereas the respondent enjoyed the legal service of Mr. Philemon Mujumba, learned counsel.

Suo motu I prompted the parties at the very outset to satisfy this court on the competence of the application before me. I raised such a concern because on perusal of the record of application, I noted a point of law that the application is incompetent before this Court. Therefore, I called upon the parties to address me on the said matter.

Mr. Sigano, counsel for the applicant was brief. He submitted that the applicant has brought the application under Order XXXVII Rule 1 (a), sections 68 (e) and 95 of the Civil Procedure Code Cap. 33 [R.E 2019] for the may reason that the provisions of the law move this court to issue a temporary injunction in a circumstance where there might occur any danger. He went on to submit that the applicants have filed an application

for an extension of time and the respondent is proceeding to execute the District Land and Housing Tribunal order, thus, they are praying for an injunctive order to restrain the respondent to take further action.

Mr. Mujumba was brief and focused, he stated that the application is improper before this Court since the cited enabling provisions of the law are contrary to the matter at hand. He added that Order XXXVII Rule 1 (a) of the Civil Procedure Code Cap. 33 [R.E 2019] is related to a pending suit while before this Court there is no any pending suit. He added that the suit was before the District Land and Housing Tribunal and the same was determined to its finality, hence this Application is improper before this Court. Ending, Mr. Mujumba urged this Court to strike out the application with costs.

Having digested the learned counsels' submission, I am settled that the issue for consideration is *whether the instant Application is proper before this Court.*

I have perused the application at hand and noted that the applicants are trying to move this court to determine the instant application through Order XXXVII Rule 1 (a) section 68 (c) and 95 of Civil Procedure Code Cap. 33 [R.E 2019], while there is no pending suit from which this

application arises or is pegged, this is in accordance with Order XXXVII Rule 1 of Civil Procedure Code Cap. 33 [R.E 2019]. For ease of reference, I reproduce Order XXXVII Rule 1 of Civil Procedure Code Cap. 33 [R.E 2019] hereunder:-

*" 1. **Where in any suit** it is proved by affidavit or otherwise—
(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit of or suffering loss of value by reason of its continued use by any party to the suit, or wrongly sold in execution of a decree; or
(b) that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors." [Emphasis added].*

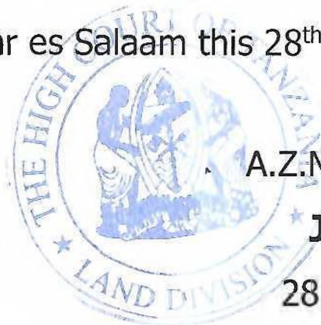
Applying the above provision of the law in the matter at hand, renders the applicant's application untenable. For the main reason that, the application at hand is not referring to a pending suit, but rather it is an application for extension of time which is also pending in this court.


Given the manner in which the suit was brought, I hold that the suit is incompetent and unmaintainable against the Defendants.

In the upshot, I proceed to strike out Land Case No. 26 of 2020. I make no order as to costs because the issue which formed the basis of this Ruling was raised *suo mottu* by the Court.


Order accordingly.


DATED at Dar es Salaam this 28th April 2023.




A.Z.MGEYEKWA
JUDGE
28.04.2023

Ruling delivered on 28th April 2023 in the presence of Mr. Sigano, counsel for the applicants and Mr. Mujumba, counsel for the respondent




A.Z.MGEYEKWA
JUDGE
28.04.2023