

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND CASE APPLICATION NO. 70 OF 2023**

GAMA JUMA GAMA APPLICANT

VERSUS

MOHAMED H. JAGWA RESPONDENT

RULING

Date of Last Order: 23/4/2023

Date of Ruling: 24/7/2023

A. MSAFIRI, J.

The applicant filed this application under provisions of Section 14 (1) of the Law of Limitation Act, Cap 89 R.E 2019 and Section 95 and Order IX Rule 9 of the Civil Procedure Code Cap 33 (R.E 2019).(the CPC)

The application was supported by the affidavit of Gama Juma Gama, the applicant. The respondent in opposition of the application, filed his counter affidavit in which he raised a preliminary objection to the effect that;

- 1. That, this application is hopeless bad in law (sic) for containing omnibus prayers.*

Alls.

The applicant prayed for the Court to dismiss the Application. As it is the procedure, the matter was set for hearing of a preliminary objection before set of a hearing of application on merit.

On 24/4/2023 when the matter was set for hearing of preliminary objection, the applicant was represented by Ms. Gwantwa Kasebeli, learned advocate while the respondent was present in person. He has no legal representation.

Ms. Kasebeli was the first to address the Court on which she submitted that, after receiving and reading the raised preliminary objection, she concede with the same. She also prayed for the leave to amend the application with no order for costs.

On his part, the respondent being a layman had nothing to add.

Having heard the submission of parties particularly the counsel for the applicant, it is obvious that the applicant is conceding to the preliminary objection. The counsel for the applicant agrees that this application is incompetent before this Court. However, she is asking leave to amend the same, but her prayers cannot be granted by this Court. This is because, it is a cardinal principle that once the preliminary objection has been raised,

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the other party is not allowed to amend the defectiveness or mistakes complained of or raised on preliminary objection.

This principle has been set in numerous cases among them the case of **Method Kimomogoro vs. The Board of Trustees TANAPA**, Civil Application No. 1 of 2005 (unreported).

It was reiterated with approval in the case of **Standard Chartered Bank & Another vs. VIP Engineering & Marketing Ltd & Others**, Civil Application No. 222 of 2016, CAT, DSM (Unreported), where the Court of Appeal held that;

“It is trite principle that where a party has raised a preliminary objection in a case, the other party cannot be allowed to rectify the defect complained of by the party who raised the objection. This is because, to do so would amount to pre-empting that preliminary objection.”

Since the applicant has conceded to the raised preliminary objection which makes the application incompetent before this Court, then the only remedy available is for this Court to strike out the application.

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For that reason, I hereby struck out this application with no order as to the costs.

Order accordingly.


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AZMSAFIRI
JUDGE
24/4/2023



THE HIGH COURT OF BOTSWANA
LAND DIVISION