

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 57 OF 2023

1. SALUM SALUM LUBAWA.....1ST APPLICANT
2. SILYAN GABRIEL LYAMUYA.....2ND APPLICANT
3. JAPHET YASSIN MAJULE.....3RD APPLICANT
4. LADISLAUS THEONEST MICHAEL.....4TH APPLICANT
5. BARIKI AKIMU TUKAU..... 5TH APPLICANT
6. PHILJOTCH MGINA.....6TH APPLICANT
7. ASUMANI MAJIR.....7TH APPLICANT
8. FARIUA ASANO.....8TH APPLICANT
9. AMINA ARA.....9TH APPLICANT
10. ISAYA SHETULY.....10TH APPLICANT
11. BRIGHTON ZAKARIA.....11TH APPLICANT
12. ZAKARIA KUSHOKA.....12TH APPLICANT
13. MWINYI SAIDI.....13TH APPLICANT
14. ANDREA MWENDA14TH APPLICANT
15. SHUKURU ASANI.....15TH APPLICANT
16. MASHA PUUSI.....16TH APPLICANT
17. STANSLAOUS NGANILA.....17TH APPLICANT
18. AGNESS G. MASANJA.....18TH APPLICANT
19. ANDERSON LEMA.....19TH APPLICANT
20. TERESYA GILLA.....20TH APPLICANT
21. SWITBETH MINJA.....21ST APPLICANT
22. YUSUPH STIVINI MKUDE.....22ND APPLICANT
23. OMARY ALLY MCHOLA.....23RD APPLICANT
24. JOVITH M. JOACKIMU.....24TH APPLICANT
25. GEORGE K. MAKARANGA.....25TH APPLICANT
26. IBRAHIMU SAIDI.....26TH APPLICANT
27. HUSENI SHABANI.....27TH APPLICANT
28. REY LUPENZA.....28TH APPLICANT
29. SARE ISHIBANI.....29TH APPLICANT
30. FATUMA ARIFA.....30TH APPLICANT
31. JACKLIN MOAMEDI LIPANDE.....31ST APPLICANT
32. MARY ABRAHAM.....32ND APPLICANT
33. OLICA SHADRACK.....33RD APPLICANT
34. MARIAM MGOMATI.....34TH APPLICANT

35. ASHA IDDI.....	35 TH APPLICANT
36. VELONIKA RICHARD.....	36 TH APPLICANT
37. IMAKULATHA SAIMON.....	37 TH APPLICANT
38. JACKRINE MOSHA.....	38 TH APPLICANT
39. SAMWELI JOMBO.....	39 TH APPLICANT
40. RODHA RAMECK.....	40 TH APPLICANT
41. SALUM LUBAWA.....	41 ST APPLICANT
42. DASTAN LUCAL KUMWALU.....	42 ND APPLICANT
43. DORIS SANYIKA.....	43 RD APPLICANT
44. EZIRA AMONI.....	44 TH APPLICANT
45. SLEMANI RIMTEGO.....	45 TH APPLICANT
46. RHODA SAIDI.....	46 TH APPLICANT
47. EDIMUND M. NDYAMUKAMA.....	47 TH APPLICANT
48. DENIS MTAJUKA.....	48 TH APPLICANT
49. JACKSON S. KABEDE.....	49 TH APPLICANT
50. ZEPHANIA N. CHIBWANA.....	50 TH APPLICANT
51. GEOFFREY FAUSTINE NYANDA.....	51 ST APPLICANT
52. CHARESI A. RISASI.....	52 ND APPLICANT
53. JASSON V. RUTAKYANA.....	53 RD APPLICANT
54. LUKA A. ASSEY.....	54 TH APPLICANT
55. JAPHET MAJULE.....	55 TH APPLICANT
56. ROMANI G. LYAMUYA.....	56 TH APPLICANT
57. JOSHUA I. MHANGA.....	57 TH APPLICANT
58. CATHELINE MABWAY.....	58 TH APPLICANT
59. BANABA MAKIO.....	59 TH APPLICANT
60. PRISCA A. KABOGO.....	60 TH APPLICANT
61. TAMIMU RAMADHANI.....	61 ST APPLICANT
62. GILBETH SUNGULA.....	62 ND APPLICANT
63. ADAM STEVEN.....	63 RD APPLICANT
64. BONIFACE WILLIAM.....	64 TH APPLICANT
65. DOMINIQUE LUKOKELWA.....	65 TH APPLICANT
66. BRAITHON KASHIKYA.....	66 TH APPLICANT
67. EMANUEL NJAUZI.....	67 TH APPLICANT
68. JEMSI MYOVELA.....	68 TH APPLICANT
69. FUFIDIKI ARANI.....	69 TH APPLICANT
70. WARI MUSUVA.....	70 TH APPLICANT
71. ROBATI AMONI HOYA.....	71 ST APPLICANT
72. ERNERT EMMANUEL ZABURUZA.....	72 ND APPLICANT
73. MUSSA BUSSAGALA.....	73 RD APPLICANT
74. ABASI SAIDI GEJA.....	74 TH APPLICANT
75. MOHAMEDI SHABANI LUBALE.....	75 TH APPLICANT

76. REHEMA ALLY RAMADHANI.....	76 TH APPLICANT
77. HABDALLA S. LUWABA.....	77 TH APPLICANT
78. OMARI SAIDI.....	78 TH APPLICANT
79. DOTTO MABATA.....	79 TH APPLICANT
80. ATHUMANI ZAKARIA.....	80 TH APPLICANT
81. PASCAL CHARLES.....	81 ST APPLICANT
82. CHRISTOPHER MSIGWA.....	82 ND APPLICANT
83. SELESTINA TRYPHON.....	83 RD APPLICANT
84. SAMU ZUBER.....	84 TH APPLICANT
85. MEDINA FRANK.....	85 TH APPLICANT
86. ANORD LADISLAUS MICHAEL.....	86 TH APPLICANT
87. JOVENARY MUTASINGWA.....	87 TH APPLICANT
88. MUBARAKA RUPIA.....	88 TH APPLICANT
89. MUGISHA JONATHAN.....	89 TH APPLICANT
90. SILVESTER PHILOPO NYAGAWA.....	90 TH APPLICANT
91. HURUMA SANGA MBEYE.....	91 ST APPLICANT
92. JOSEPH MATIAS HAULE.....	92 ND APPLICANT
93. DORIS ANTHON MBOZO.....	93 RD APPLICANT
94. KEGAN LEGAN KISWAGA.....	94 TH APPLICANT
95. VICENT STIVIN SHEMWETA.....	95 TH APPLICANT
96. RICHARD LAWI JACOB.....	96 TH APPLICANT
97. ISACK JOEL NANTANGA.....	97 TH APPLICANT
98. JONAS E. SAM.....	98 TH APPLICANT
99. CHARLES EDSON KOMBA.....	99 TH APPLICANT
100. HENRY MICHAEL KOLIMBA.....	100 TH APPLICANT
101. RAMADHANI SELEMAN MTEGO.....	101 ST APPLICANT
102. MICHAEL MREMA.....	102 ND APPLICANT
103. YUSUPH SELEMAN CHILONZO.....	103 RD APPLICANT
104. JOHN MICHAEL NGOWI.....	104 TH APPLICANT
105. DIWA FESTO MLIMBILA.....	105 TH APPLICANT
106. ALMA ALLY MPANJU.....	106 TH APPLICANT
107. SALUM RASHID ZAGAWA.....	107 TH APPLICANT
108. EPHRAIM R. SANGA.....	108 TH APPLICANT
109. FULGENCIA RAPHAEL AMRI.....	109 TH APPLICANT
110. ISAYA MHANZI LUNYIRIKO.....	110 TH APPLICANT
111. EMMANUEL JACKSON BALITIMBO.....	111 TH APPLICANT
112. MATHEW MATONGO.....	112 TH APPLICANT
113. MOSES KALEDO SUNGWA.....	113 TH APPLICANT
114. ALLY SAIDI KILA.....	114 TH APPLICANT
115. HAMIS RAMADHAN NASSORO.....	115 TH APPLICANT
116. AROUN ZEPHANIA RABILA.....	116 TH APPLICANT

117. FLAVIAN REGINALD MABUIRI.....	117 TH APPLICANT
118. JOAKIM JOAKIM NDIALI.....	118 TH APPLICANT
119. NAZARI SALUMONDO SESHAO.....	119 TH APPLICANT
120. SELEMAN RAJAB MTEGO.....	120 TH APPLICANT
121. RUKIA MOHAMED RAMADHANI.....	121 ST APPLICANT
122. ERICK JOSEPH NYAMBELE.....	122 ND APPLICANT
123. IDD ISSA MSURI.....	123 RD APPLICANT
124. ZENA SHABAN KITENGE.....	124 TH APPLICANT
125. RAJAB MUSSA SALEHE.....	125 TH APPLICANT
126. JOYCE JOHN KAKILA.....	126 TH APPLICANT
127. YEBA HASSAN YEBA.....	127 TH APPLICANT
128. HALIMA YEBA SINJA.....	128 TH APPLICANT
129. KWEGI YEBA SINJA.....	129 TH APPLICANT
130. OMARY SAID LUBUVA.....	130 TH APPLICANT
131. YAHYA SALIMU HUSSEIN.....	131 ST APPLICANT
132. LUCY LUCAS LAIZER.....	132 ND APPLICANT
133. GRACE FRANCIS MESHY.....	133 RD APPLICANT
134. SALVATORY EDWARD LUSIMBI.....	134 TH APPLICANT
135. PIUS KAISHAZA BENGESI.....	135 TH APPLICANT
136. ALEX JUMA NYABERU.....	136 TH APPLICANT
137. KASTO JOVIN MANGUMBULI.....	137 TH APPLICANT
138. EMMANUEL JUDICA MURO.....	138 TH APPLICANT
139. AMINA ABDALLAH MWILANGI.....	139 TH APPLICANT
140. JUMA SHABANI LUKINGA.....	140 TH APPLICANT
141. MICHAEL MICHAEL MAGAWA.....	141 ST APPLICANT
142. LEONAD ZAKARIA MTAKYAWA.....	142 ND APPLICANT
143. HALMA SALUM LUBAWA.....	143 RD APPLICANT
144. FALISHA HASSAN HALIFA.....	144 TH APPLICANT
145. ASHA MALEMBO.....	145 TH APPLICANT
146. PASCAL JOHN NGEREJA.....	146 TH APPLICANT
147. NEEMA RYEYEMAMU ALUBANO.....	147 TH APPLICANT
148. POGAN MICHAEL MUYAGA.....	148 TH APPLICANT
149. RUKIA RASHID ZAGANZA.....	149 TH APPLICANT
150. EVA DANIEL LUNGWA.....	150 TH APPLICANT
151. BAHATI ELIAS NOMBO.....	151 ST APPLICANT
152. MAYASA AMIRY MARWATA.....	152 ND APPLICANT
153. HARIMA MIRIAM KUSAGA.....	153 RD APPLICANT
154. ELIAS MENESI GULO.....	154 TH APPLICANT
155. WINSTON GODFREY RWEIKILA.....	155 TH APPLICANT
156. MBARAKA SUED RUPIA.....	156 TH APPLICANT
157. MASTURAMIKIDAD KHALIDI.....	157 TH APPLICANT

158. YUSUPH RAZARO CHILONGA.....	158 TH APPLICANT
159. SUZANA JOSEPH FANUEL.....	159 TH APPLICANT
160. RICHARD MGIMWA.....	160 TH APPLICANT
161. MICHAEL JINGI.....	161 ST APPLICANT
162. SAD HASSAN SHWGANDO.....	162 ND APPLICANT
163. SALIANA HASSAN SHEZEGWANDO.....	163 RD APPLICANT
164. MUTALEMWA GEORGE ANATORY.....	164 TH APPLICANT
165. ALLY ABDALLAH KITAMU.....	165 TH APPLICANT
166. NYARI HAMIS SALIM.....	166 TH APPLICANT
167. AGNES JOSEPH FANKY.....	167 TH APPLICANT
168. DORIS MALIHILA.....	168 TH APPLICANT
169. ANTONY RAPHAEL SHETULY.....	169 TH APPLICANT
170. CHARLES RAPHAEL SHETULY.....	170 TH APPLICANT
171. NRWIZA THUMOTHEO.....	171 ST APPLICANT
172. RUKIZA GODFREY	172 ND APPLICANT
173. MUSA MAULID.....	173 RD APPLICANT
174. AISA ISRAELE MMARI.....	174 TH APPLICANT
175. EMANUEL M. KIMARIO.....	175 TH APPLICANT
176. SHABANI OMARY MFAUME.....	176 TH APPLICANT

VERSUS

1. OMARI KADRI.....	1 ST RESPONDENT
2. MWENYEKITI WA MTA A WA ZEGERENI.....	2 ND RESPONDENT
3. BARTAZAR SIMEON.....	3 RD RESPONDENT
4. ADILI AUCTION MART LIMITED.....	4 TH RESPONDENT

RULING

4th & 27th April, 2023

L. HEMED, J.

This ruling is in respect to the preliminary objection raised by the counsel for the applicants against the joint counter affidavit of the 1st, 2nd and 4th respondents on the points that:

" (a) The Counter affidavit is incurably defective for containing objections on points of law, prayers and legal conclusions/arguments.

(b)The Counter affidavit is sworn by un-authorized person.

(c) The verification clause is defective for not disclosing sources of information."

The preliminary objection was argued by way of written submissions. Parties promptly filed their submissions as directed by the Court. **Mr. Benitho L. Mandele** learned advocate argued for the applicant in support of the objection while **Mr. Denis Maringo** and **Mr. Ferinand Makore** learned advocates, argued to oppose the objection in favour of the respondents.

In respect to the 1st limb of objection, Mr. Mandele argued that the 1st paragraph in the counter affidavit is a notice of preliminary objection. He was of the firm opinion that affidavits are only required to contain statements of facts. He asserted that the counter affidavit is offensive to the rules governing affidavits rendering the same to be defective beyond repair.

It was added by Mr. Mandele that apart from the above defect, paragraphs 5th ,6th ,7th ,8th ,9th ,10th and 11th to the counter affidavit are

as well defective for containing legal arguments. He demonstrated that, statement like “ **the 1st respondent is the lawful owner of the suit property**”(in paragraph5); “**the property is lawfully owned by the 1st respondent**”(paragraph 6); “**the application has in wholly been made out of anxiety, fear and anticipation**” (paragraph 7(iii)); “**that no single applicant who in this application has managed to provide of proof establishing ownership**” (paragraph 7(iv). similarly, all averments in paragraphs 7 (v) & (vi) and paragraphs 8,9 and 10 of the counter affidavit are all legal conclusions. Paragraph 11 is also a prayer. To cement his argument, he cited the case of **Uganda vs Commissioner of Prisons [Ex-parte Michael Matovu]** (1966)EA.514 and the case of **Rostam Aziz vs Rev. Christopher Mtikila**, Civil Case No.131 of 2008.

In reply thereto, the advocate of the 4th respondent conceded that some paragraphs of the respondents’ joint counter affidavit filed by Mr. Ferdinand Makore, contains some slight legal arguments and conclusions. He also asserted that by inserting the point of preliminary objections therein was improper, but the same arose from slip of a pen. The learned counsel for the 4th respondent stated that the court should expunge the offending portions or direct amendment of the same. He further stated that

should the Court make a finding that the remaining part cannot be salvaged as whole, the 4th respondent should be authorized to amend the counter affidavit.

Having gone through the rival submissions made by the counsel for both parties in respect of the 1st limb of objection, I have noted that both are at one that the counter affidavit contains objections on point of law, prayers and legal conclusions. Going through the 4th respondent's submissions, it is crystal clear that he has conceded the 1st limb of objection.

I have also gone through the Counter Affidavit and found that the 1st paragraph is a preliminary objection on point of law which is against the rules governing affidavits. Order XIX Rule 3(1) of the Civil Procedure Code, [Cap.33 RE 2019 provides thus:

*"... Affidavits **shall be confined to such facts as the deponent is able of his own knowledge to prove**, except on interlocutory applications on which statements of his belief may be admitted: Provided that, the grounds thereof are stated."
(Emphasis added).*

The above provision requires for an affidavit to be confined to facts only. However, as aforesaid, paragraph 1 of the joint counter affidavit

contains matters of law contrary to the rules governing affidavits. The 1st paragraph of the joint counter affidavit is thus deserving the required consequences.

Additionally, having gone through paragraphs 5th , 6th , 7th , 8th,9th ,10th and 11th of the joint counter affidavit, I found that they contain arguments and/or prayers. I am holding so because I am aware of the rules governing affidavits which require that affidavits must not contain arguments, questions, speculations, demands, prayers, wishes, objections and legal conclusions. This position was also held in **Uganda vs Commissioner for Prisons, Ex-parte Matovu** (1966) E.A.514 thus:

*" Again, as a general rule of practice and procedure, an affidavit for use in court, being a substitute for oral evidence, should only contain statements of facts and circumstances to which the witness deposes either of his own personal knowledge or from information which he believes to be true. **Such an affidavit must not contain an extraneous matter by way of objection or prayer or legal argument or conclusions.**"*

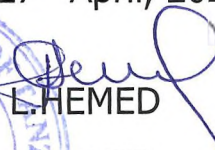
From the above-cited authority, it is obvious that paragraphs 5, 6, 7, 8,9,10 and 11 of the joint counter affidavit are offensive and defective. I am aware that defective paragraphs deserve to be expunged from the


affidavit. I thus proceed to expunge paragraphs 1, 5,6,7,8,9,10 and 11 of the joint counter affidavit for being in conflict with the rules governing affidavits.

However, having expunged paragraphs 1, 5 up to 11, the joint counter affidavit remains with only paragraphs 2, 3 and 4 which do not salvage the counter affidavit. In the circumstance, it is inevitable to strike out the entire counter affidavit for being defective. The same is hereby struck out. Costs to be in the course.

It is so ordered.

DATED at DAR ES SALAAM this 27th April, 2023.


L. HEMED
JUDGE



COURT: Ruling delivered in the presence of **Mr. Benito Mandele** for the applicants this 27th April 2023.


L. HEMED
JUDGE

