

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 335 OF 2023

ABDULRASHID MGONJA (As a Co-administrator of the Estate of

MWANAID SAID KAMANDOO) APPLICANT

VERSUS

OMARY ISSA NAUYA (As an administrator of the Estate of

FATUMA OMARI) 1ST RESPONDENT

CHRISTIAN SEBASTIAN KIMATI 2ND RESPONDENT

KINONDONI MUNICIPALE COUNCIL 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

RULING

03/7/2023 & 10/7/2023

A. MSAFIRI, J.

The applicant has brought this application under Order XXXVII Rule 1(a) (2), (4), and Section 68 (a) and Section 96 of the Civil Procedure Code Cap 33 R.E 2019(the CPC).

He is seeking for interim order of injunction to restrain the respondents from interfering with the applicant's use of the suit premises as was described in the chamber summons.

The application was supported by the affidavit of the applicant Abdulrashid Mgonja. *Atte.*

The respondents filed their counter affidavits to object the application. The 3rd and 4th respondents filed a Notice of preliminary objection whereby they raised two points of law to the effect that;

1. That, the application is incompetent and bad in law for being supported by an incurably defective affidavit having a defective jurat of attestation.
2. That, the application is incompetent and bad in law for being supported by an incurably defective affidavit having a defective verification.
3. That the application is incompetent for contravening the mandatory requirement of Section 44(1) of the Advocates Act, Cap. 341 R.E 2002.

It is a settled law that once a preliminary point of objection is raised, the Court is duty bound to entertain it first and make a decision thereon before proceeding to hear the case on merit.

Hence, the hearing of the preliminary objection was set. As per the prayers of the parties and leave of the Court, the hearing was set to be by way of written submission and the Court set the schedule thereof.

However, on 10th July 2023, the counsel for the applicant, Ms. Rehema Mgweno, learned advocate addressed the Court that, the

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applicant is conceding with the raised preliminary objections and prayed that the matter should be struck out but with no order as to the costs.

Ms. Mgweno prayed for the leniency of the Court on costs and urged the Court to take into consideration that the applicant has readily conceded to the preliminary objections without taking Court's time.

The 3rd and 4th respondents were represented by Mr. Jeremiah Odinga, learned State Attorney had no objection to both prayers of the applicant.

The 2nd respondent was represented by Mr. Raymond Oisso, learned advocate. He had no objection to the prayer of the applicant that the matter be struck out, but he prayed for the costs. He argued that the 2nd respondent has incurred expenses in preparation for the defence of this matter hence they should be granted costs.

The 1st respondent was appearing in person, he also prayed that the matter should be struck out with costs. He added that, the applicant has sought for the Court's leniency but the Court should instead exercise leniency to him, the 1st respondent as he has been struggling financially to prepare and attend this case. *Alls*

In rejoinder, the counsel for the applicant reiterated her submissions and prayers.

Having heard all parties' submissions, it is my view that by conceding to the preliminary objections, the applicant through his advocate is admitting that this application is incompetent before the Court.

The remedy for the incompetent application is to be struck out. Since the respondents have incurred costs to file the pleadings and attend this application which the applicant has admitted to be incompetent, then they have a right to the costs.

In the upshot, the application is struck out with costs.

It is so ordered.



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A. MSAFIRI

JUDGE

10/7/2023

