

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 485 OF 2023

CITY LINK PENTAGON HOTEL LIMITED.....APPLICANT

VERSUS

DISMAS JOACHIM MARIWA.....1ST RESPONDENT

HELLEN PHILIP NJAU.....2ND RESPONDENT

RULING

6th September, 2023

L. HEMED, J.

CITY LINK PENTAGON HOTEL LIMITED, the applicant herein lodged the instant matter on 7th August, 2023 under section 78(4) of the Land Registration Act, [Cap 334 RE 2019 and section 95 of the Civil Procedure Code, [Cap 33 R.E. 2019] praying for the following orders:

“(a) That the caveat posed/registered by the 2nd Defendant in respect of the property registered as Plot No. P 35323 KUNDUCHI RTD, IPTL Area, Salasala Street Kinondoni Municipality within Dar es Salaam City with an area of one Thousand Two Hundred (1200) square meters be uplifted.

(b) A declaration that the plaintiff is the rightful purchaser of the property registered as Plot No. P 35323 KUNDUCHI RTD, IPTL Area, Salasala street, Kinondoni Municipality within Dar es Salaam City with an area of One Thousand Two hundred (1200) square meters.

(c) That 1st and 2nd Defendants have no righty on the registered (sic) as Plot No. P 35323 KUNDUCHI RTD, IPTL Area, Salasala street, Kinondoni Municipality within Dar es Salaam with an area of One Thousand Two hundred (1200) square meters.

(d) That costs be provided for."

The application has been supported by the affidavit deponed by one **GASPER JOACHIM MARIWA**, the principal officer of the applicant. The 1st Respondent could not challenge the application. However, the 2nd respondent filed the Counter Affidavit deponed by one **HELLEN PHILIP NJAU** to contest the application. The 2nd respondent also raised the preliminary objection on the following points of law, thus: -

"(a) The Application is incompetent for non- joinder of Registrar of Titles as necessary party.

(b) That the affidavit in support of the application is incurably defective for containing legal argument."

When the matter was called for necessary orders on 6th September, 2023, the counsel for the 2nd respondent **Mr. Rajab Mrindoko** opted to drop the 2nd limb of objection. He prayed to argue on the 1st limb of objection on the competence of the matter for non-joinder of the Registrar of Titles as necessary party.

The court also, *suo moto* raised a point of law on the tenability of the application at hand for being *omnibus* carrying incompatible prayers.

Mr. Imran Juma, learned advocate who appeared to represent the applicant, conceded to both points raised by 2nd respondent and that one raised by the court *suo moto*. He however, prayed that the application be struck out with no orders as to costs. Mr. Mrindoko, learned counsel for the 2nd respondent was of the view that the 2nd respondent should be awarded costs as she engaged an advocate who filed counter affidavit, and raised the Preliminary Objection after thorough research.

As pointed out earlier, Mr. Juma, advocate of the applicant conceded to the Preliminary objection raised by the 2nd respondent on the competence

of the application for non-joinder of the Registrar of Titles. He also admitted that the application is *omnibus* for containing incompatible prayers.

I have gone through the chamber summons and found that in the 1st prayer the applicant seeks for an order of this court to uplift the caveat registered by the 2nd respondent in respect of the suit property. The 1st prayer is concomitant to the cited enabling provision of section 78(4) of the Land Registration Act, [Cap 334 R.E 2019]. The 2nd prayer is for declaratory orders that the applicant is the rightful purchaser of the disputed property.

In the first place, this prayer is not compatible to the prayer for uplifting the caveat. It is also not backed with any provision of the law. I am also of the firm view that the prayer for declaring the applicant the rightful purchaser of the suit property cannot be granted in the application like the one at hand. It needs to be extensively determined by way of a suit as it requires substantial evidence.

From the foregoing, the fact that the applicant has conceded to the points of law raised against the application, I have no option but to uphold them. The application at hand is thus incompetent for non-joinder of the Registrar of Title as necessary party and for being *omnibus* containing

incompatible prayers. The fact that the 2nd respondent had already contested the application by filing Counter Affidavit, she is entitled for costs. In the upshot, the entire application is hereby struck out with costs. It is so ordered.




L. HEMED
JUDGE
06/09/2023