

**IN THE HIGH COURT OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**  
**MISC. LAND APPLICATION NO. 308 OF 2022**  
*(Originating from Land Case No. 242 Of 2021)*

**UTEGI TECHNICAL ENTERPRISES (INTL) LTD ..... 1<sup>ST</sup> APPLICANT**

**ALUTECH ENGINEERING (E.A) LTD ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**TEMEKE MUNICIPAL COUNCIL ..... 1<sup>ST</sup> RESPONDENT**

**TANZANIA RAILWAY COOPERATION ..... 2<sup>ND</sup> RESPONDENT**

**REGISTRAR OF TITLES ..... 3<sup>RD</sup> RESPONDENT**

**COMMISSIONER FOR LANDS ..... 4<sup>TH</sup> RESPONDENT**

**DIRECTOR OF MAPPING AND SURVEY ..... 5<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**SEAGLOW SHIPPING SERVICES LIMITED .....7<sup>TH</sup> RESPONDENT**

**RULING**

*Date of last Order: 22.02.2023*

*Date of Ruling: 22.02.2023*

**A.Z MGEYEKWA, J**

The applicants' application is brought under Certificate of Urgency, the same is made under section 2(3) of the Judicature and Application of Laws

Ordinance Cap. 453 of 2019 and sections 68 (c), (e) 95 of Civil Procedure Code Cap.33 [R.E 2019]. The Application is premised on the grounds appearing on the Chamber Summons together with the supporting affidavit of Mr. Otieno Alung'a Igogo, the Principal Officer of the 1<sup>st</sup> Applicant sworn on 20th December, 2023, the applicant prayed this Court to grant interim injunction commonly known as Mareva Injunction order restraining the respondents, against or anybody or authority from demolition the remaining building hosting the applicant furniture factory pending the expiry statutory notice served to the 1<sup>st</sup> and 3<sup>rd</sup> respondents.

The Application is contested. The 1<sup>st</sup> to 6<sup>th</sup> respondents filed a joint counter affidavit of Elias Evelius Mwenda, State Attorney sworn on 19<sup>th</sup> January, in which they disputed the applicants' claims. The 7<sup>th</sup> respondent also filed a counter affidavit of Shashi Bhushan Kumar, Principal Officer of the 7<sup>th</sup> respondent. The Application stumbled upon preliminary objections from Mr. Shashi Bhushan Kumar, he has raised three points of preliminary objection as follows: -

1. *That the Application is incompetent and bad in law since it contains multiple applicants while it is supported by only one affidavit of the 1<sup>st</sup> applicant.*

2. *The Application is incompetent and bad in law for being supported by an incurable defective affidavit of the 1<sup>st</sup> Applicant and thus not properly verified and*
3. *That the Application is incompetent and bad in law for non-joinder of the seller by the 1<sup>st</sup> Applicant.*

When the matter was called for hearing on 22<sup>nd</sup> February, 2023, the applicants enlisted the legal service of Mr. Living Raphael & Nassoro Lukman learned Advocates. The 1<sup>st</sup> to 6<sup>th</sup> respondents had the legal service of Mr. Elias Mwenda, Joseph Batulila, and Victoria Mtuli, learned State Attorneys. The 7<sup>th</sup> respondent enjoyed the legal service of Mr. Ngassa Ganja Mboje, learned Advocate.

As the practice of the Court, I had to determine the preliminary objection first before going into the merits or demerits of the Application.

Submitting on the first preliminary objection, The learned counsel for the 7<sup>th</sup> respondent submitted that the principle of law is that every application under the civil procedure is required to be made by a Chamber Summons supported by an affidavit. To support his submission he referred this Court to Order III of the Civil Procedure Code Cap. 33 [R.E 2019]. Mr. Ngassa contended that in the present matter, two applicants are aggrieved by the

conduct alleged to be done by the respondent and as the result of the existence of civil wrong the applicants have decided to join their civil wrongs by filing this application. He argued that from the wording of the C.S. Otieno Alung'a Igogo in paragraph 1 is introducing himself as the counsel of the 1<sup>st</sup> applicant, hence the 2<sup>nd</sup> applicant has no affidavit to support Chamber Summons. Therefore, it renders the application competent. Supporting his submission, Mr. Ngassa cited the cases of **CATS Tz Ltd and 4 others v International Commercial Bank Ltd**, Misc. Commercial Application No. 116 of 2022 and **Registered Trustee of Anita's Greenland Schools (T) 86 Others v Azania Bank Ltd**, Civil Application No. 168/16 of 2020. Therefore, it was his view that the present application is incompetent for want of the affidavit of the 2<sup>nd</sup> applicant.

As to the second 2<sup>nd</sup> preliminary objection; he claimed that the applicants' affidavit is defective for being not properly verified. He stated that a verification clause is a crucial part of an affidavit, it assists the Court to know the statements of fact and it is evidential value. He added that where an averment is not based on personal knowledge then the said knowledge should be clearly disclosed otherwise the application is defective. The learned counsel for the 7<sup>th</sup> respondent contended that in the present matter, it is clear that the deponents have personal knowledge of the affairs related

to the 1<sup>st</sup> application by virtually being his Advocate. He added that the source of state of facts related to the 2<sup>nd</sup> applicant is not disclosed hence it renders the affidavit to be incurably defective.

As to the 3<sup>rd</sup> preliminary objection; the 7<sup>th</sup> respondent' counsel argued that failure to join the seller as the necessary part is fatal. He stated that the applicants in paragraph 4 of the affidavit, stated that they purchased the suit land from one Gillo, but the seller is not a party to this case. Mr. Ngassa contended that in a suit for recovering land, the seller is a necessary party and failure to join renders the proceeding fatal. Fortifying his submission, Mr. Ngassa cited the case of **Juma Bundala v Rawant Mukand** (1983) TLR 103.

He stated that the affidavit under the scrutiny of one Igogo of the 1<sup>st</sup> applicant to that capacity he has no authority to verify the facts of the 2<sup>nd</sup> applicant otherwise he is compelled to disclose the source of information through a verification clause. Mr. Ngassa stated that the applicants in paragraph 2 speak about the status and registration of the second applicant. Paragraph 21 is making a statement about the 2<sup>nd</sup> applicant's property to the effect that the 2<sup>nd</sup> applicant has nowhere to move his property, the said statement is not based on the deponent knowledge, and the same is not reflected in the

verification clause, thus, the same is incurable defective. To buttress his contention he cited the cases of **Jamal S. Mkumba and Another Attorney General**, Civil Application No. 240/01 of 2019 at Dar es Salaam and **Benedict Ijumba V. Abdallah Nahdi**, Land Case No. 316 of 2017.

In conclusion, Mr. Ngassa beckoned upon this Court to sustain the objections and strike out the application with costs.

In response thereto, when Mr. Living took the stage to address this Court, Mr. Living was emphatic that the application is properly before the Court.

The learned counsel for the applicants opted to start to submit on the 3<sup>rd</sup> limb of objection. He forcefully opposed the objection by arguing that a vendor is not a necessary party in the matter at hand. Thus, in his view the objection on the misjoinder of the necessary party is irrelevant. Mr. Living distinguished the cited cases from the matter at hand. Mr. Living went on to argue that the 2<sup>nd</sup> applicant is joined as a necessary party. Mr. Living submitted that the 2<sup>nd</sup> applicant is joined because he rented the premises, while their focus is on the protection of the 1<sup>st</sup> applicant's property awaiting the expiration of 90 days the 2<sup>nd</sup> applicant is a mere tenant. To support his submission he referred this Court to paragraph 7 of the applicant's affidavit.

Arguing for the 2<sup>nd</sup> limb of objection; the learned counsel for the applicants contended that saying that the 2<sup>nd</sup> applicant is a necessary party is a submission from the bar since there is nowhere stated in the affidavit. He urged this Court not to base its decision on the words from the bar. He submitted that the law requires that multiple applicants have to file affidavits even if he is a necessary party he has to file an affidavit. Therefore, he was certain that the defect is incurable. Mr. Living continued to submit that the applicants in paragraph 21 of their affidavit explained in length on the issue of irreparable injury that the 2<sup>nd</sup> applicant stands to lose more if the injunctive order is not granted because the 2<sup>nd</sup> applicant has no place to move to his tech machines. Mr. Living refuted that the 2<sup>nd</sup> applicant's affidavit was not verified. He argued that the applicant in all paragraphs stated that he has personal knowledge. He further submitted that this Court can expunge paragraph 24 and still the affidavit will suffice to support the application.

As to the 1<sup>st</sup> limb of the objection, the counsel for the applicants submitted that filing or not filing the 2<sup>nd</sup> applicant's affidavit does not prejudice the parties. Mr. Living submitted that in case this Court will strike out the 2<sup>nd</sup> applicant from the application and the objective of the application will remain intact. He valiantly contended that there is no any substantive prayer related to the 2<sup>nd</sup> applicant, all prayers are related to the 1<sup>st</sup> applicant. He went on to

applicant or of some other person or persons who are knowledgeable about the facts at issue. Now, having perused the instant application, it is clear that the same has been made by way of a Chamber Summons supported by the affidavit of the first applicant's Principal Officer, Otieno Alung'a Igogo, the deponent did not state that the second applicant instructed her to swear the affidavit in her capacity. For ease of reference, I find it apposite to reproduce the first paragraph of the first applicant's affidavit thus:-

*" That am the Principal Officer of the first Applicant in this Application hence conversant with the facts I am about to depose hereunder."*

The above excerpt clearly shows that the first applicant's Principal Officer swore the affidavit on her own behalf and on behalf of the first applicant only. This means the second, applicant has not filed any affidavit to support his application as required by the law. The above-stated scenario is not new, because it has been dealt with by the Court of Appeal of Tanzania in the case of **LRM Investment Company Limited & Five Others v. Diamond Trust Bank Tanzania Limited & Another**, Civil Application No. 418/18 of 2019 (unreported). In that application, two affidavits were filed by the third and fourth applicants on their own behalf and on behalf of the first and second applicants. There were no affidavits on behalf of the fifth and sixth applicants and the Court observed that:-



*"The ailment of the application not being supported by the affidavit of the fifth and sixth applicants renders the application incompetent".*

See also **The Registered Trustees of St. Anita's Greenland School & 6 Others vs Azania Bank Ltd**, Civil Application No. 168/16 of 2020 delivered on 9<sup>th</sup> June, 2022 and **NBC Holding Corporation and Another v. Agricultural & Industrial Lubricants Supplies Limited & Two Others**, Civil Application No. 42 of 2000 (both unreported). Going by the cited authorities, failure by the applicants to file an affidavit, joint affidavit, or affidavits to cover all of them is fatal to the application.

I am mindful of the fact that, in a bid to save the application, Mr. Vedasto has implored this Court to consider the fact the mistake did not prejudice the respondent and he stated that this Court can remove the second applicant and the objective of the Application will remain the same. In my view, the learned counsel request cannot be granted since the Chamber Summons includes the second applicant therefore removing the name of the second applicant will not cure the ailment. Since there is no affidavit for the second applicant, there then the omission renders the application incompetent and thus it cannot be partly saved as urged by Mr. Living.

Under the circumstances, I find the 7<sup>th</sup> respondent's counsel's contention on the first preliminary objection meritorious. I will therefore detain myself in evaluating and analyzing the remaining objections doing so will be an academic exercise. In the event, the incompetent application is hereby struck out with costs.

Order accordingly.

DATED at Dar es Salaam this 20<sup>th</sup> February, 2023.



  
A.Z.MGEYEKWA

**JUDGE**

20.02.2023

Ruling delivered on 20<sup>th</sup> February, 2023 in the presence of all learned counsels.



  
A.Z.MGEYEKWA

**JUDGE**

20.02.2023