

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**MISC. CIVIL REVISION NO. 73 OF 2004**

**ROHSANA Y. ISMAIL . . . . . APPLICANT**

**VERSUS**

- 1. FUAD ISMAIL SAID**
- 2. NATIONAL HOUSING CORPORATION . . . . . RESPONDENTS**

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*Date of last order – 11/9/2007*

*Date of Ruling – 11/12/2007*

**R U L I N G**

**Shangwa, J.**

On 28/7/2004, the Applicant Rohsana Y. Ismail filed an application requesting this court to call for the record of the District Court of Ilala at Samora in Misc. Civil Application No. 44 of 2004 for the purposes of satisfying itself as to the legality of the orders made on 5<sup>th</sup> and 6<sup>th</sup> July, 2004 and the whole proceedings thereto.

On 22/9/2005, the Respondent filed a notice of preliminary objection to the said application on the following grounds. First, that the affidavit of Rohsana Y. Ismail is tainted by fraud in that it was not affirmed and attested as by law required. Second, that the said Rohsana Y. Ismail was not in Dar es Salaam on 9/7/2004 and did not affirm the affidavit in support of the application. Three, that there are pending proceedings in the High Court, Land Division namely Land Case No. 64 of 2004 involving the parties.

This preliminary objection was argued by way of written submissions. Counsel for the Applicant Mr. Maige submitted in his written submissions that the question as to whether the affidavit of the Applicant is tainted with fraud is a question of fact which need be established by evidence on trial.

In his written submissions, counsel for the Respondent Mr. Nyange relied on what the Applicant told Hon. Kileo, J.

appearing on it is forged. The burden to prove the alleged fraud and forgery is on him.

In my opinion, the Applicant's application cannot be defeated on a mere allegation that it is supported by an affidavit which is tainted with fraud and forgery. I think that Mr. Nyange's prayer for stay of hearing the Applicant's application for revision pending determination of Land Case No. 64 of 2004 by the High Court Land Division is not tenable. I say so because the proceedings in that case which is between the parties in this application have no relationship with this application to call for the record of the lower court and satisfy itself of the legality of the orders of the District Court of Ilala made on 5<sup>th</sup> and 6<sup>th</sup> July, 2004.

As a whole, I do not find any merit in the three points of preliminary points of preliminary objection raised by the Respondent. For this reason, I dismiss the preliminary

objection and order that the Applicant's application for revision should come for hearing on 12/2/2008. Each party to bear own costs.



A. Shangwa

**JUDGE**

11/12/2007

Delivered in Court this 11<sup>th</sup> day of December in the presence of Mr. Maige for the Applicant and Mr. Nyange for the 1<sup>st</sup> Respondent.



A. Shangwa

**JUDGE**

11/12/2007