

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC LAND APPLICATION NO. 505 OF 2023
(Arising from Land Case No. 71 of 2023)

KIGAMBONI MUNICIPAL COUNCIL.....1ST APPLICANT
THE ATTORNEY GENERAL.....2ND APPLICANT

VERSUS

FAUZIA ABDALLAH MOHSIN MALIK.....1ST RESPONDENT
MALIK ABDALLAH MOHSIN MALIK.....2ND RESPONDENT
TARIQ ABDALLAH MOHSIN MALIK.....3RD RESPONDENT

RULING

21st to 26th September, 2023

E.B. LUVANDA, J

The Respondents raised a preliminary objection thus: in so far as the application has been brought under Order IX rule 9 of the Civil Procedure Code, Cap 33 of the laws, there has never been an *ex parte* decree and/or *ex parte* order.

Mr. Joseph Rutabingwa learned Counsel for Respondents submitted that Order VIII is quite comprehensive on the procedure to be followed where a party for on reason or another fail to file the respective written statement of defence. He submitted that there is no *ex parte* decree or order of that day, arguing it was an oral submission and hearing of both parties. He submitted that the application filed is based on misconception of the true position and the governing law.

Ms. Caroline Lyimo learned State Attorney, submitted to defend her course, but at later stage, by implication, conceded a defect, arguing that wrong citation of the law or non citation of the provision of the law is not fatal. She cited **Dangote Cement Ltd vs. MSK Gas and Oil Ltd**, Misc. Commercial Application No. 8/2020; **Amani Girls Home vs. Isack Charles Kamela**, Civil Application No. 325/2019 CAT Mwanza.

On rejoinder, the learned Counsel for Respondent submitted that the application hand cannot be an incidence of wrong citation of the enabling provision arguing that the jurisdiction of the court is not saved for Order VIII rule 14(2) rather presuppose that there is already a hearing and a case is pending for judgment. He submitted that the Applicant had made a prayer for extension of time to file the written statement of defence and was refused, argued that it cannot be said that the jurisdiction of the court is saved. He submitted that having conceded to the improper application and there being a notice of objection, the remedy is to strike out and/or dismiss the application with costs.

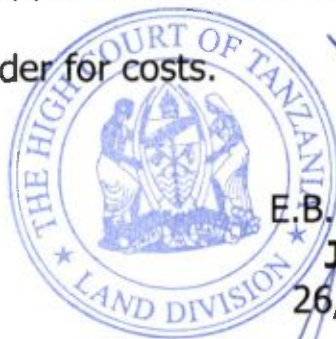
Essentially, the underpinned defect in the preliminary objection is wholly hinged on a wrong citation. This can be indicated by the submission by the Senior Counsel for the Respondent that Order VIII is quite comprehensive on the procedure to be followed where a party for one reason or another fail to file the respective written statement of defence. For that matter, the provision of Order IX rule 9, Cap 33 (supra), is a

wrong and inapplicable provision. However, it is common ground that wrong citation now days is not fatal and therefore cannot be taken to disable the court to entertain orders sought. In so far the orders sought are intact, I rule the anomaly to be a curable one which can be condoned. Regard being, the provision of section 95 Cap 33 cited in the chamber summons can suffice to enable the prayers sought. In the case of **Dangote Cement** (supra) it was held, I quote,

.....needless of the afore observation, though not disputed by the respondent, the afore wrong citation of the law cannot in any how affect the jurisdiction of this Honourable Court to grant the orders sought.

In that respect, the preliminary objection is overruled to pave way for the merit of the application to be heard.

I make no order for costs.



E.B. LUVANDA
JUDGE
26/09/2023

Ruling delivered in the presence of Mr. Joseph Rutabingwa learned Counsel for Respondents and Ms. Caroline Lyimo learned State Attorney for the Applicants.



E.B. LUVANDA
JUDGE
26/09/2023