

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

MISC. LAND CASE APPLICATION NO. 488 OF 2023
(Originating from Land Case No. 255 of 2023)

HAPPINESS SIMON NDEKI.....APPLICANT

VERSUS

**INTERNATIONAL COMMERCIAL BANK (T) LTD.....1ST
RESPONDENT**

MBUZAX AUCTION MART AND COMPANY LTD..2ND RESPONDENT

N AND J INVESTMENT LIMITED.....3RD RESPONDENT

JOSEPH JAMES MGANA.....4TH RESPONDENT

R U L I N G

Date of Last Order: 29.08.2023

Date of Ruling: 25/09/2023

T. N. MWENEGOHA, J.

In this Application, the applicant sought for a declaratory order, under **Order XXXVII Rule 1 and 2**, read together with **Sections 68 and Section 95 of the Civil Procedure Code, Cap 33 R. E. 2019**. She prayed among others, for an order, restraining the respondents and any other person working under their instructions, from evicting, stopping or otherwise, disturbing the applicant from the use of a house, located at Kawe Area, Kinondoni Municipality, with Certificate of Title No. 86341 Plot No. 998, also another house, located at Plot No. 542, Block K, Mbezi,

within Kinondoni Municipality. And the last house which is located at Plot No. 195, Block 2, with Certificate of Title No. 86341, all found within the Dar es Salaam Region, pending the determination of Land Case No. 255 of 2023. The Application was supported by the affidavit of the applicant herself, Happiness Simon Ndeki. The same proceeded by way of written submissions.

Before I venture into summarizing the submissions for and against the instant Application, I will first address an anomaly that I have noted, existing in the Application at hand. That, the applicant has not provided a specific provision under which this Application is made. The parties were notified of this issue for them to address the Court, owing to the reason that, the anomaly so noted, affects the competence of this case.

They complied and filed their submissions as ordered. For the purpose of serving this Court's time, I will not reproduce the same here. However, much consideration has been given to the said arguments and they have been incorporated in this Ruling.

The law is well settled that, wrong or improper citation of law makes the Application incompetent. This rule has been emphasized in a number of authorities. One of them is the case of **Edward Bachwa & 3 Others versus The Attorney General & Another, Civil Application No. 128 of 2008, (unreported)**, where it was observed as follows;-

"In view of these undisputed facts, the next question to contend with is; what, then the fate of this application? The answer is found in unbroken chain of authorities to the effect that wrong citation of the law, section, subsections or/and paragraphs of the law or non-citation of law will not move

the court to do what is asked and renders the application incompetent."

See also the case of **Alfan Juma Seif & Another versus The Republic, Misc. Criminal Application No. 106 of 2021, High Court of Tanzania at Arusha(unreported).**

In the instant case, the applicant has used **Order XXXVII Rule 1 and 2**, read together with **Sections 68 and Section 95 of the Civil Procedure Code, Cap 33 R.E 2019**, as enabling provisions for her Application. There is no problem with section 95, as it provides for inherent powers of the Court.

My concern is on the use of **Order XXXVII Rule 1 and 2**, read together with **Sections 68 of the Civil Procedure Code, Cap 33 R. E. 2019**. These are the major provisions, being the basis and the foundation of this Application. The same are broad and contain subsections and sub rules as the case may be. Each provision has its specific application intended to be used in different circumstances.

Order XXXVII Rule 1 has sub rules (a) and (b). Same as for **Order XXXVII Rule 2**, which has sub rules (1)-(3). On the other hand, **Section 68** has subsections (a-e). As pointed above, each of these provisions stands for specific circumstances. Therefore, the applicant was duty bound to specify as to which of the above provisions, she relies on as enabling provision in this Application. Failure to do so, makes the entire application incompetent as stated in **Edward Bachwa &3 Others versus The Attorney General & Another**, (supra).

For the reasons explained herein, I find the Application to be incompetent and the same is struck out with costs.

It is so ordered.


T. N. MWENEGOHA

JUDGE

25/09/2023

