IN THE HIGH COURT OF UNITED REPUBLIC OF THE TANZANIA
(COMMERCIAL DIVISION)
AT DAR-ES-SALAAM

MISC.COMMERCIAL APPL. NO.40 OF 2021
(Arising from Commercial Case No.31 of 2019)

HASHIM HASSAN MUSSA..... APPLICANT
VERSUS
DR.CRISPIN SEMAKULA .....1ST RESPONDENT
STANDARD CHARTERED BANK LTD.....2ND RESPONDENT

RULING

Date of Last Order: *12/07/2021*
Date -Judgement: *14/09/2021*

NANGELA, J:,

On the 25th day of March 2021, Mr Gabriel Simon Mnyele, the learned counsel for the Applicant, filed this application under a certificate of urgency. He certified that the matter at hand is of utmost urgency, given that the 1st Respondent is on the move to illegally access the accounts and dialysis equipment in a Company known as "**Access Medical Dialysis Centre Limited**", and at the detriment of the Applicant.

The Chamber Application was filed under Order XXXVII Rule 2 (1), (2); section 95 of the *Civil Procedure Code*, Cap.33 [R.E 2019], and section 2 (1) of the *Judicature and Application of the Laws Act*, Cap.358 [R.E

2019]. It is supported by an affidavit of **Mr Abdullah Nur Guled** duly affirmed, attested and filed in this Court.

In his Chamber summons, the Applicant seeks for the following prayers, to wit, that:

1. this hounourable Court be *pleased* to grant an injunctive order against the 1st Respondent restraining him from changing the particulars of *Account No. 8702021856400* (USD) and *Account No.0102021856400* (TZS), held by and in the same name of *Access Medical Dialysis Centre Limited* at the 2nd Respondents International House Branch, including the change of signatories of the said accounts, pending the filing and determination of the intended appeal to the Court of Appeal.
2. That, the hounourable Court be pleased to grant a restraint order, restraining the 1st Respondent from taking possession of dialysis equipment kept at lease premises by the said *Access Medical Dialysis Centre Limited* in Mwanza, Upanga and Mikocheni Dar-es Salaam, pending the filing and determination of the intended appeal to the Court of Appeal.

3. That, this honourable Court be pleased to direct the 2nd Respondent not to operate or make any changes of operation of the aforementioned accounts herein above pending the determination of the intended appeal.
4. Costs of this Application.

On the 22nd day of April 2021, the 1st Respondent filed a counter affidavit deponed by one **Dorothea Joseph Rutta**. Besides, the 1st Respondent raised a notice of preliminary legal issues that called for the attention of this Court. The 2nd Respondent did not file a counter affidavit. The grounds of objection raised by the 1st Respondent are as follows, that:-

1. the application for injunction and restraint order is misconceived and untenable as it has no main suit and is based on a Miscellaneous Commercial Application which has long been decided on;
2. the application is an abuse of court process as it is pre-empting the execution of a decree held by the 1st Respondent and, further that, it is a stay of execution in disguise;
3. the application is misplaced and improper before this Court and its affidavit (in support) has been

sworn by a person with no locus to sue or swear the same, having been based on a defective power of attorney.

On the 7th day of June 2021, this application was scheduled for mention. On the material date, the Applicant enjoyed the legal services of Ms Anna Dismas Kailole, learned advocate, holding the briefs of Advocate Mr Gabriel Mnyele. Ms Dorothea Rutta and Mr Emannuel Saghan, learned advocates, appeared for the Respondents.

Upon being invited by the Court, Ms Kailole prayed that, the preliminary objections raised by the 1st Respondent be disposed of by way of written submissions. I granted the prayer, as it was conceded to by the parties, and I issued a schedule of filing, which the parties have duly complied with. I will therefore proceed to summarize and assess their submissions before I address the pertinent issue.

In her submission, Ms Rutta submitted, in support of the preliminary objection, stating, in regard to the first object, that, the current application has been based on a winding up petition which has long been decided and, for that matter *resjudicata*. She has attached, for reference, the Decision of this Court in the **Misc. Commercial Cause No.31 of 2019** and a Drawn Order in respect of it.

Ms Rutta submitted, as a matter of legal principle, that, all applications for injunctive or interlocutory reliefs must arise from a pending suit. She contended that, contrary to that principle, in this present application before this Court, there is no main suit for there to be a *prima facie case* as it was articulated in the case of **Atilio vs. Mbowe** (1969) HCD 284.

Ms Rutta submitted further that, the winding up petition, which was ***Misc. Commercial Cause No.31 of 2019,*** cannot be a main suit, let alone the fact that, the case was long disposed of. She further relied on the case of **The Registered Trustees of Sunni Muslim Jammat vs. Sayed Mazar Kadir & Others**, Civil App. No.18 of 2002, TZCA 248; (18th May 2007), to support her submission. In that case, the Court of Appeal stated, on page 7, in respect to the matter that was placed before it, that:

> "[a]ll the orders which were orders which were being sought by the respondents, ought to have been based on an existing suit. Indeed, Order XXXVII of the C.P.C speaks for itself. There must be an existing suit before a temporary injunction and/or any interlocutory order could be lawfully granted by any Court."

As regards the second ground of objection, Ms Rutta submitted that, following the dismissal of the winding up petition (the *Misc. Commercial Cause No.31 of 2019),* the 1st Respondent proceeded and commenced execution proceedings before this Court. To that effect, she attached, as proof thereof, the Court's summons on the execution of the Orders of this Court in the **Misc. Commercial Cause No.31 of 2019.** She held her ground, contending that, the orders sought by the Applicant are meant to forestall and make redundant the efforts to execute the decree, which efforts are currently underway.

In her view, the law is very categorical that, upon filing for an execution by an Applicant, the only open course to challenge it is by way of stay of execution and not otherwise.

Besides, Ms Rutta upped her tempo of argument submitting that, even though the Applicant herein has preferred an Appeal through a Notice of Appeal already filed in the Court of Appeal, he must in the first place comply with the requirements of Rules 11 (3), (4), (5)(a)(b), and (7)(a),(b),(c) and (d) of the Court of Appeal Rules, 2009 (as amended by GN.344 of 2019).

Ms Rutta contended, therefore, that, the current application is nothing but an abuse of the court process and a circumvention of the procedures of this Court.

As for the third ground of objection, it was Ms Rutta's submission that, this application is misplaced, improper and the affidavit supporting it has been sworn by a person who has no locus to sue and or/swear the same, it having been based on a defective power of attorney. To elaborate on that, Ms Rutta contended that, the fact that the application was brought under a power of attorney ought to have been reflected in its heading. She contended that, nowhere is this fact reflected in the chamber summons.

Ms Rutta contended that, in suits under a power of attorney, a person, not a resident of Tanzania, may appear by a lawfully authorized attorney. It was Ms Rutta's submission that, in the present application, there is no evidence the Applicant (Mr Hashim Hassan Mussa) whose address as per page 1 paragraph 1 of the Power of Attorney is Dar-es-Salaam, Tanzania, is out of Tanzania or not a resident of Tanzania. She argued, therefore, that, Mr Abdullah Nur Guleid lacks locus to sue and cannot rely and swear an affidavit on the basis of the power of attorney.

To bolster her submission, Ms Rutta has relied on the case of **Rayan Salum Mohamed (by virtue of special power of attorney of Sherdel Ghulam Rend) vs. Registered Trustees of Masjid Sheikh Albani**, Civil Appeal No.340/18 of 2019) TZCA at Dar-es-Salaam, (Nov.2019) noting that, in that case, the Court of Appeal

was of the view that, a person not a resident of Tanzania, may appear by a lawfully authorised attorney.

Ms Rutta was of the view that, the power of attorney did not authorise the deponent in the affidavit the mandate to institute the current application. She argued that, the special power of attorney he held gave him power with respect to the conduct of the *Misc. Commercial Cause No.31 of 2019* and *Misc. Commercial Cause No. 147 of 2019* only, if one is to look at paragraph 1 of the special power of attorney dated 4th February, 2020.

In view of the above, Ms Rutta submitted that, since the power of attorney was a "**Special Power of Attorney**" and not a "**Genera Power of Attorney**", then, the donee lacks locus and cannot handle issues which are foreign or not included in the power of attorney.

Ms Rutta further contended in a pre-emptive approach that, in instances as this one, some tend to seek the aid of the overriding objective principles. However, she called to the attention of this Court that, the oxygen principle, as it is also referred to, cannot be used to help a party to circumvent the mandatory rules of the Court. She called to her aid, the case of **Martin D. Kumalija and 117 Others vs. Iron and Steel Ltd, Civil Appl.No.70 of 2018, CAT, (unreported)** which supports that legal position.

That being said, Ms Rutta closed her submissions by observing that it will be absurd for this Court to entertain an application which is defective and against the rules of procedure. The only remedy, she contends, is to dismiss it with orders as to costs.

In response to the 1st Respondent's submission, Mr Mnyele, the Applicant's learned counsel contended, as his preliminary observations, that, in between the authorities relied upon by the 1st Respondent, there is attached, an application for execution filed on 13th April, 2021 as an annexure. He submitted that, it is now settled that, no annexure can be tendered before the Court during submission stage. Mr. Mnyele submitted that, the respective annexure ought to have been attached to the affidavit and/or counter-affidavit in order that it may be referred to during the submission stage.

To support that submission, he relied on the reported case of **TUICO vs. Mbeya Cement Company Ltd and Another [2005] TLR 41**. Mr Mnyele was of a further view that, aside from the fact that the 1st Respondent's attachment of the annexure to the submission and reliance on it was erroneously, the practice also went against the established principle that govern preliminary objections as articulated and followed in various decisions including those of the Court of Appeal.

The principle, he argued, is to the effect that, a preliminary objection ought to be a pure point of law which does not need the ascertainment of facts in order to determine it. To support that view, he referred to this Court the decision of the Court Appeal in the case of **Shahida Hasamali Kassim vs. Mahed Mohamed Gulamal Kanji**, Civil Appl.No.42 of 1999, (unreported) and **Mukisa Biscuits Manufactires Company Ltd vs. Westland Distributors Ltd** [1969] EA 700-DF.

It was Mr Mnyele's submission, that, reference to the impugned attachment renders the preliminary objection a matter of fact that requires ascertainment, thus disqualifying the same from being referred as such. Consequently, he urged this Court to disregard the annexure attached to the written submission filed by the 1st Respondent and argued, that, since the 2nd objection is premised on the annexure, it must crumble as it has no legs upon which to stand.

Responding to the first ground of objection, Mr Mnyele submitted that, since there is no statutory definition of the term "suit" but that, section 22 of the CPC provides that a suit may be instituted by presentation of a plaint, or in such other manner as may be prescribed, presentation of a Chamber Summons/Application, originating summons, petition or reference to the Court amounts to the filing of a suit.

In view of that, he urged this Court to make a finding that the **Misc. Commercial Cause No.31 of 2019** was a suit submitted in a prescribed manner by way of a petition under the Companies Act, Cap.212 and the Insolvency Rules, GN. NO. 43 of 2005. He contended, therefore, that, an application for injunction can be applied under that suit (i.e., **Misc. Commercial Cause No.31 of 2019**) in accordance with the CPC.

Secondly, Mr Mnyele submitted that, Order XXXVII, upon which this application for injunction is made, provides for three scenarios under which an application for an injunction can be made. These, he pointed out, are:

> ***first,*** under Order XXXVII Rule 1 (a) in regard to a property that may be in the danger of being wasted, damaged, or alienated by another party to the suit or when the property is about to be sold in execution of the decree.
>
> ***Second,*** under Order XXXVII Rule 1 (b) where the defendant threatens or intends to remove or dispose his property in order to defraud his creditors, a litigant may apply for an injunction.
>
> ***Third,*** under Order XXXVII Rule 2(1) where a party to the proceedings may apply for an injunction if the Defendant threatens to commit a breach of contract or other injury of any kind at

> any time after the commencement of the suit and either before or after judgement.

It was Mr Mnyele's correct submission that, the two scenarios presented by Order XXXVII rule 1 (a) and (b) there must be a pending suit. He relied on the case of **Seedcap Limited vs. PSRC and Another**, Misc. Civil Cause No.244/2003, (unreported) to support his submission. He contended, however, that, there are some lingering doubts regarding the correctness of the Court of Appeal Decision in the case of **The Registered Trustees of Sunni Muslim Jammat** (supra).

Mr Mnyele submitted that, under Order XXXVII rule 2 (1) an application may be made, even after a suit has been concluded. He contended, for that matter, that, since the present application was brought under that rule and not under Rule 1 of Order XXXVII, pendency of a suit is not a necessity and the first objection should be dismissed in its entirety.

As regards the 2nd objection, it was Mr Mnyele's submission that the same should be disregarded. He reiterated his earlier submission that the annexure referred to by the Applicant were wrongly annexed to the submission. He maintained that, the current application was filed in Court because the 1st Respondent is attempting to change particulars of the account and withdrawal monies there-from and take possession of

equipment not decreed in the Court's ruling dated 15th December 2020.

He contended that, the process of payment could only be triggered if the parties had signed a share purchase agreement followed by the share transfer deed. To him, those two documents should, had they been there, proved to the 2nd Respondent that the Applicant no longer has interest in the company.

Mr Mnyele contended further that, under Rule 11(4) of the Court of Appeal Rules, an application for stay could only be made if an application for execution is filed and notified to the judgement debtor. He argued that, this application was filed on 22nd March 2021 while the appended copy of application for execution was filed on 13th April 2021 and served upon the Applicant herein on 28th April 2021. He argued, therefore, that, since the current application was filed before an application for execution was filed and served upon the Applicant, it was impossible to file an application for a stay orders. He asked this Court to; therefore, dismiss the 2nd objection as well.

As regards the last objection, Mr Mnyele submitted that, the argument that the application is improper for having not indicated that it was brought under a power of attorney is misconceived. He argued that, the person applying to the Court is the Applicant himself only that the

affidavit in support has been sworn by a person having power of attorney. Mr Mnyele argued that, clause 1 of the power of attorney read together with clause 3 give power and locus to the deponent to affirm affidavit. He submitted that, reading the power of attorney it will be erroneous to contend that it ended with **Misc. Comm. Appl. No. 31 of 2019 and 147 of 2019**.

As regards the applicability of the Court of Appeal Decision in the case of **Rayat Salum Mohamed** (supra) and whether Mr Hashim is a resident of Tanzania or not lest he cannot be represented by a *donee* of a power of attorney, Mr Mnyele submitted that, presence of the Applicant in Tanzania at the time of filing will amount to a purely matter of fact which cannot be determined as if it was a matter of law.

He contended further that, though at the time of signing the power of attorney the applicant was temporarily in Dar-es-Salaam, he has indicated where he would be, a fact confirmed in paragraph 1 of the affidavit in support of the chamber summons. He maintained that, the averments that the Applicant is in Tanzania have not been substantiated by the 1st Respondent.

Finally, Mr Mnyele submitted that, under Rule 30(2) of the Court of Appeal Rules, it is clear that the Rules do not apply in the High Court as they regulate the procedure in the Court of Appeal, as per Rule 4(1) of the Rules. He

contended that, appearances and representation in the High Court is regulated by Order III Rule (1) and (2) of the Civil Procedure Code, Cap.33 R.E 2019, and, that, Order III Rule 2(a) justify the acts of Mr Abdillah Nur Guled's to affirm an affidavit by virtue of the power of attorney. He urged this Court, therefore, to dismiss the third preliminary objection as well.

Having heard the learned counsel appearing for the parties and having considered the materials on record, the question of law falling for my consideration is whether the three preliminary objections raised by the 1st Respondent have any merit in them. In its first objection the 1st Respondent contends that since the current application has been based on a suit which has long been decided, i.e., the **Misc. Commercial Cause No.31 of 2019**, the application is incompetent. In other words, it is being alleged that, in this present application before this Court, there is no main suit for there to be a *prima facie case* as it was articulated in the **Atilio vs. Mbowe** (supra).

On the other hand, the Applicant contends that, since the present application was brought under Order XXXVII Rule 2(1) and not under Rule 1 of Order XXXVII, pendency of a suit is not a necessity. In the first place, it is indeed a correct general legal position that, all applications for injunctive or interlocutory reliefs must arise from a pending suit. The cases of **Atilio vs. Mbowe**

(supra), **The Registered Trustees of Sunni Muslim Jammat** (supra) **and** that of **Morities Corporation Limited vs. CRDB Bank PLC** (Misc. Civil Application No.24 of 2018) [2018] TZHC 2700; (28 June 2018) apply to that principle.

As I indicated herein, the Applicant's contention is that the prayer for temporary injunction sought for in the chamber summons, comes within the provision of Rule 2 of Order XXXVII, and not Rule 1 of that order. Under Order XXXVII Rule 2(1) of the C.P.C, the law is clear that, a party may:

> "at any time ... **after judgment, apply to the court for a temporary injunction** to restrain the defendant form committing the ... injury complained of, ... injury of .. relating to the same property or right."

In this present application, it is true that the ***Misc. Commercial Cause No.31 of 2019,*** was long disposed of by this Court and its ruling was delivered on 15th December 2020. It is also true that the current application has been brought not under Order XXXVII Rule (1) of the C.P.C, but under Order XXXVII Rule 2(1) of the C.P.C. It means therefore, that, the application can still stand because it was brought under Order XXXVII rule 2(1) of the C.P.C. As such, the first objection is devoid of merits and I hereby overrule it.

As regard the second objection, the main contention is that the application is an abuse of court process as it is pre-empting the execution of a decree by the 1st Respondent and, further that, it is a stay of execution in disguise. So far the Applicant has contended that, all documents relied upon and which were not attached to the affidavit filed by the 1st Respondent should not be counted or relied upon.

In essence, it is trite, as it was held in the case of **TUICO vs. Mbeya Cement Company Ltd and Another [2005] TLR 41**; that, annexure not attached to an affidavit cannot be rendered and relied upon in Court during submission stage. Indeed they ought to have been attached to the affidavit and/or counter-affidavit if one intends to refer to them during the submission stage.

In this application, the 1st Respondent's counsel has argued that there has been already filed an application for execution and, that, the Applicant wants to pre-empty it. She has termed that to be amounting to an abuse of the court process. Agreeably, it is the law that, upon filing for an execution by an Applicant, the only open course to challenge it is by way of stay of execution and not otherwise. However, as correctly contended by the learned counsel for the Applicant, the current application was filed on 22nd March 2021 while it is shown that the application

for execution was filed on 13th April 2021 and served upon the Applicant herein on 28th April 2021.

In view of that, I tend to agree with the Applicant's submission that, since the current application was filed before an application for execution was filed and served upon the Applicant, it was impossible to file an application for a stay orders. Besides, having been filed under Order XXXVII rule 2(1) of the C.P.C, I do not find the rationale to turn it down on the ground that it was intended to pre-empty the application for execution which was not in the Court, in the first place, when this application was filed. For that reason, I find that the second objection will as well fall flat.

As regards the third objection, the gist of it is that this application is misplaced, improper and the affidavit supporting it has been sworn by a person who has no locus to sue and/or/swear the same, it having been based on a defective power of attorney. Ms Rutta, the learned counsel for the 1st Respondent has maintained a view that the power of attorney relied upon by the deponent of the affidavit supporting the application was special and in respect of **Misc. Commercial Cause No.31 of 2019** and, for that matter, did not extend to the filing of the current application.

For his part Mr Mnyele, the learned counsel for the Applicant has vehemently denounced such submissions

calling upon this Court to dismiss the third objection as one which is misconceived. He argued that, the person applying to the Court is the Applicant himself, only that the affidavit in support has been sworn by a person having power of attorney. He relied on clause 1 of the power of attorney read together with clause 3, contending that, such clauses give power and locus to the deponent to affirm affidavit.

Besides, Mr Mnyele was of the view that, appearances and representation in the High Court is regulated by Order III Rule (1) and (2) of the Civil Procedure Code, Cap.33 R.E 2019, and, that, Order III Rule 2(a) justify the acts of Mr Abdillah Nur Guled to affirm an affidavit by virtue of the power of attorney.

Let me state, that, in principle, Mr Mnyele is correct when he said that the Court of Appeal Rules, 2009 (as amended 2019) do not apply in this High Court because they are meant to regulate the procedure in the Court of Appeal, as per Rule 4(1) of the Rules. However, as regards the applicability of Order III Rule (1) and (2) of the C.P.C, Cap.33 R.E 2019, let me state that, all that Order III, rule 2(a), requires in relation to a person holding a power of attorney is that, whatever be the power of attorney, that power of attorney must confer the necessary power upon that person.

Having said that, the question that follows out of the above rival arguments is whether the power of attorney relied upon by the deponent of the affidavit which supports this application was or could be relied upon to authorize the deponent to swear an affidavit in respect of this application or was it only confined to the Misc. Commercial Cause No.31 of 2019 as contended?

Essentially, a power of attorney can either be general power of attorney or a specific power of attorney. When a general power of attorney is given, it applies to everything in which the grantor is interested in, but when a special power is given it applies to a "specific" matter.

In this application, the parts and clause 1 of the Power of Attorney dated 4th day of February 2020 reads as follows:

"THE REGISTRATION OF DOCUMENTS ACT

(CAP.117 R.E 2002)

SPEGIAL POWER OF ATTORNEY

KNOW ALL MEN TO WHOM IT MAY CONCERN

THAT I, the undersigned HASHIM HASSAN MUSA with Danish Passport No.211872584, the resident of Dar-es-Salaam, Tanzania, but on temporary visit to Griffenfildsgrade 10, 2200 Copenhagen, Denmark. DO HEREBY ordain, nominate and appoint **ABDULLAH NUR GULEID** of Dar-es-Salaam with Passport No.TAE 07346 to be my lawful Attorney and for me and in my name and for my use to do the following acts, that is to say:

1. To institute any further proceedings, appear in Court and execute any document required in Court or in any other institution, adduce evidence on my behalf, attend the Court proceedings in respect of the **Miscellaneous Commercial Cause No.31/2019** for the Petition for Winding Up of the **ACCESS MEDICAL & DIALYSIS CENTRE LIMITED** (hereafter referred as "the Company" and "**Misc. Commercial Cause Nov.147/2019**" for the Appointment of the Interim Liquidation of the Company and Comply with any order of the Court issued towards the proceedings for Winding Up of the Company".

2.....

3. For purposes aforesaid to do every other act, matter or thing in the Court which the Attorney may deem it necessary or proper **in relation to the said hearing and final determination of Applications.**" (Emphasis added).

From the above caption, it is clear that the power of attorney referred to by the Applicant was "**a specific power of attorney**". As I stated earlier, a specific power of attorney is meant for doing a specific act. In this regard the power of attorney in question was specifically for purposes "in respect of the **Miscellaneous Commercial Cause No.31/2019** (for the Petition for Winding Up of the **ACCESS MEDICAL & DIALYSIS CENTRE LIMITED)** and "**Misc. Commercial Cause**

Nov.147/2019" (for the Appointment of the Interim Liquidation of the Company)".

The learned counsel for the Applicant has contended that, the respective power granted to **Mr ABDULLAH NUR GULEID** (the donee) included powers to swear affidavit in respect of the present application. He has placed reliance on paragraph 3 of the power of attorney.

However, as I look at paragraph 3 of that particular document, it becomes clear to me that, paragraph three, and if read with paragraph one, clearly shows that, the donee was authorised "**to do every other act, matter or thing in the Court which the Attorney may deem it necessary or proper in relation to the said hearing and final determination of Applications.**" The underline phraseology is very clear that the border line within which the donee was to operate was demarcated and did not extend to new borders in the form of new applications as the one at hand.

In the case of **Western India Theatres Ltd. vs Ishwarbhai Somabhai Patel** 1959 29 CompCas 133 Bom., the Bombay High Court was of the view that:

> "However full the powers may be which are conferred upon the donee, if they relate to one particular matter, if they are not general in the sense as referring to his whole business or a particular section of his business **or to all his litigation**, then the mere fact that wide and full powers are

> conferred upon the donee with regard to one specific matter will not make the power of attorney a general power of attorney. The connotation of the word "general" is that the power must be general with regard to the subject-matter, not general with regard to the powers conferred in respect of subject-matter. What one has got to look at before one decides whether a power is general or special is what is the subject-matter in respect of which this power is conferred, and if the court comes to the conclusion that the subject-matter is not general, that it is restricted to something specific, some things particular, then the power of attorney would not be a general power of attorney."

As I stated here above, the power granted to **Mr Gulein**, (the donee), he was not granted a general, but a specific power of attorney and which applied for specific proceedings (and not **all litigations**). That being said, I cannot buy what Mr Mnyele has endeavoured to submit, arguing that, the power of attorney also extended to the filing of the current application.

What then, is the effect of the finding that the power of attorney which Mr Gulein relied upon when swearing the affidavit which was filed in support of the current application? The response to this question is very obvious. The supporting affidavit becomes incompetent for being deponed by a deponent who held no such powers as he stated in the affidavit to be holding. Being

incompetent, it cannot support the application. It is as if no affidavit was filed to support the application.

And, in the absence of an affidavit which can effectively support the chamber summons, then, the application becomes invalid as well as incompetent by reason of the fact that it becomes noncompliant with the relevant provision of Order XLII Rule 2 of the Civil Procedure Code, Cap.33 R.E 2019, which require such application to be supported not only by grounds in the body of the application, but also by affidavit. Consequently, once found that the supporting affidavit is incompetent, and once the chamber summons stands without a supporting affidavit, the only remaining course to be taken is to have it struck out.

In view of the above deliberations, it my finding that the third ground of objection has merit and I hereby uphold it. Since the 2nd Respondent did not appear in court or file document in respect of this application, I only grant costs to the 1st Respondent.

All said and done, the current application is hereby struck out with costs to the 1st Respondent.

It is so ordered

SALAAM, this 14TH SEPTEMBER 2021

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HON. DEO JOHN NANGELA
JUDGE,