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IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 153 OF 2004

IDD SEMVUA MSANGI APPLICANT

VERSUS

- | | | |
|--|---|-------------|
| 1. SISTY LEONARD AND
IYEN NSEMWA AS LIQUIDATORS
OF TANZANIA CROWN
CORKS LTD. | } | RESPONDENTS |
| 2. ERICK AUCTION MART | | |

RULING ON THE PRELIMINARY OBJECTION

SHANGWA, J.

On 2nd August, 2004, the applicant filed a chamber application supported by affidavit for an ex parte interim order of allowing him to continue to stay in the house in dispute which is on Plot 21 Ada Estate pending the final disposal of the main application *inter-partes* and on its merits. The matter was filed under a certificate of urgency and on 4th August, 2004, the court granted the said order.

The main application is for an order of stay of execution of the order to evict the applicant issued in RM Civil Case No. 54 of 2002 at Kinondoni pending the determination of High Court Civil Revision No.89 of 2004 which is still pending in this court.

On 12th August, 2004, learned Counsel for the respondent **Mr. Rwebangira Eustace** raised a preliminary objection against the main application stating that the court is not properly moved as the law upon which the application is made is not stated.

He submitted that apart from indicating the section under which the application is brought i.e. Section 32(1) B(ii), the applicant did not mention the law to which this section relates i.e. **The Evidence Act, 1967, The Civil Procedure Code, 1966, The Law of Limitation Act, 1971, The Magistrates Courts Act, 1984 etc. etc.**

He contended that as the applicant did not mention the particular law to which Section 32(1) B(ii) relates, and under which his application is made, the court has not been properly moved by him, and that his application is incompetent and should be struck out with costs. In support of his contention, he cited three cases of the Court of Appeal of Tanzania namely **Civil Application No.88 of 1998 Almas Iddie Mwinyi Vs NBC & Another [unreported]**, **Civil Application No.20 of 1997 NBC Vs Sadrudin Meghji [unreported]** and **Civil Application No.3 of 2003 Naibu Katibu Mkuu [CCM] Vs Mohamed Ibrahim Versi & Sons [unreported]**.

Learned Counsel for the applicant **Mr. Kassim Nyangarika** conceded that the law under which the application was brought is not cited. He said the omission to cite it was due to oversight on the part of his Secretary while under pressure of typing the chamber summons which was filed under a certificate of extreme urgency. He said this omission is slight.

He contended *inter alia* that the omission can be cured by reading the words **Magistrates Courts Act, 1984** in the chamber summons or ordering amendment and that Section 32(1) B(ii) which he cited in his chamber summons can only be found under the **Magistrates Courts Act, 1984** and not in any other statute. He tried to distinguish the cases of the Court of Appeal of Tanzania which were cited by learned Counsel for the respondent and said that their nature is different from the present application.

In general, the point of objection raised by the respondent to the applicant's application for stay of execution of the lower court's order is quite obvious. It is not in dispute that the law under which the application has been brought is not stated in the chamber summons. What is stated therein is a mere section namely Section 32(1) B(ii). Despite the excuse which has been stated for not doing so, this omission is not slight as stated by learned Counsel for the applicant. **It is big.**

Unfortunately, no application to rectify the situation was made before the chamber summons was served on the respondent. Therefore, this court cannot cure the omission at this stage by reading the words Magistrates Courts Act, 1984 in the Chamber Summons or ordering the amendment of the application as contended by Counsel for the applicant. There are a number of instances in which the Court of Appeal of Tanzania when faced with a similar situation did not determine the matter in that way.


It goes without saying that the court is entitled to know before hand under which law any application has been brought before it. The opposite party to the application is also entitled to know before hand the law under which the application has been filed for preparing a counter reply.

Certainly, an application such as the one before this court in which the applicant does not cite the law under which it has been brought is incompetent and cannot be maintained. One may wonder


in this particular case as to why the court cannot maintain this application as it did in respect of the application for interim orders which had a similar defect. The answer to this question is that whereas the application for interim orders was *exparte* and of extreme urgency, the present application is *interpartes* and has no such urgency.

At any rate, the holding by the Court of Appeal of Tanzania in **Civil Application No. 88 of 1998 Almas Eddie Mwinyi Vs NBC** and another **[unreported]** which has been referred to me by learned Counsel for the respondent in support of his objection to the present application is binding on this court. In that case, **Ramadhani J.A.** held *inter-alia* that non citation of law is worse and renders an application incompetent.

As I have already said, the applicant's application has a similar defect and is incompetent. Under such circumstances, the court has not properly been moved for the order of stay of execution of the lower court's eviction order. Therefore, I uphold the respondent's preliminary point of objection against this application and I strike it out with costs.


A. SHANGWA
JUDGE
22/10/2004

Delivered at Dar es Salaam this 22nd day of October, 2004.


A. SHANGWA
JUDGE
22/10/2004