

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC. LAND APPL. NO. 12 OF 2020

(Arising from the Decision of the district Land and Housing Tribunal for Manyoni at Manyoni in Land Application No. 22 of 2016 and Misc. land case No. 13 & 14 both of 2018)

MWAMI PAULO JOSEPH..... APPLICANT

VERSUS

1. SALEHE MOHAMED SALEHE

2. MWAMBA MILLENNIUM COMPANY LTD

RESPONDENTS

1/9/2021 & 7/9/2021

RULING

MASAJU, J

The Applicant, Mwami Paulo Joseph, filed in the Court the Chamber Summons Application made under Section 95, Order XXXIX Rule 5(1) and Order XLIII Rule 2 of the Civil Procedure Code [Cap 33] for stay of execution of sale of the house/cows/goats/land as issued by the District Land and Housing Tribunal for Manyoni at Manyoni in Miscellaneous Land Application No. 13 of 14 both of 2018. The Application is supported by an Affidavit sworn by the Applicant himself.

The Respondents, Salehe Mohamed Salehe and Mwamba Millenium Company Limited contest the Application. They filed their joint Counter Affidavit in the Court.

When the Application was heard in the Court on the 16th day July, 2020, both parties were represented. The Applicant was represented by Mr. Halfan Moshi Advocate while the Respondents were represented by Mr. Isaya Edward Nchimbi, Advocate.

In the course of hearing of the Application, the learned counsel for the Respondents while submitting against the Application in the Court, he raised a concern that, in his Affidavit, the Applicant was sworn in before the commissioner for oath who happens to be the Applicant's advocate contrary to the Notaries Public and Commissioners for Oath Act, [Cap 12] That, there is conflict of interest between the Applicant and the commissioner for oath.

The Applicant's counsel did not contest the allegations by the Respondent counsel apart from praying the Court to withdraw the advocate's instruction and order the Applicant to find another advocate.

After hearing the parties' submissions on the raised concern by the Respondent's counsel, the Court wish to draw attention of Section 7 of the Notaries Public and Commissioners for Oath Act [Cap 12], thus;

"7. No commissioner for oaths shall exercise any of his powers as a commissioner for oaths in any proceedings or matter in which he is advocate to any of the parties or in which he is interested".

The provision of the law restricts any advocate representing either of the parties to act as a commissioner for oaths of either of parties in the matter or proceedings. In the instant case, it is very evident and clear that the Affidavit by the Applicant was sworn in by his learned counsel, acting as a commissioner for oaths which is against Section 7 of the Notaries Public and Commissioners for Oaths Act [Cap 12]. The Affidavit ought to have been sworn by any other advocate from the Applicant's counsel.

The layman Applicant instructed the learned counsel to assist him in this Application since he is ignorant of the law, hence the learned counsel ought to have acted diligently in assisting his client pursuing his rights, if any. The learned counsel's indiligence can not be condoned by the Court, neither can it be the cause for the Applicant to suffer the consequences occasioned by his indiligent learned counsel.

That said, the defective Application is hereby struck out. The Applicant shall file his legally proper Application, if any, in the Court within fourteen (14) days of this Ruling. The parties shall bear their own costs.



GEORGE M. MASAJU

JUDGE

7/9/2021

