

TANZANIA / JUDGMENT

20150720 TZHC Dar es Salaam

COURT
TZHCDECIDED
20 July 2015

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- IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CIVIL REVISION NO. 39 OF 2014
[Originating from the decision of Kisutu Resident Magistrate's Court in RM: Civil Case No.
407 of 1995 and 113/ 1996] SHIRWA COMPANY LTD, ... APPLICANT
VERSUS ,,,,. ABU ABDULBAZAK 1st RESPONDENT TEMEKE
MUNICIPAL COUNCIL 2nd RESPONDENT Date of last order - 15/7/2015 Date of
Ruling - 20 /7/2015

RULING

Feleshi, J.: The Applicant has invited this Court to revise the proceedings and orders in RI\ Civil Case No. 407 of 1995 and 113 of 1996 betv.reen the parties herein issued by Hon. I. Arufani, PRIVI on 27/11/2014 and also to satisfy itself as to their correctness, propriety, legality and 1nake any appropriate orders to correct the claimed incorrectness, ilnpropriety and illegalities. The Application is made under S. 44 (1) (b) of the MCA, Cap 11 RE 2002 and 8.79 (1) of the Civil Procedure Code, Cap 33 R.E. 2002. The Application ·was filed on 13/12/2014 and "wheri called on for hearing on 5/5/2015 none of the parties sho\ved up. The san1e · Page 1 of 4 r· was fixed for hearing on 22/6/2015. On that date Mr. Mp"V\raga Bernard Advocate appeared for the Applicant ·while the 2 nd Respondent, the Temeke Municipal Council was represented by Mr. Lusa Edv;,rin who also held Brief of Mr. Kambamwene Advocate for the 1 st Respondent. On that date, Mr. Lusa Ed,Nin informed the Court that upon senrice the counsel for the 1 st Respondent had instructed him to pray for leave for so that he could file his Counter Affidavit within 7 days. The prayer was granted and hearing was fixed on 15/7/2015. Very unfortunately, the 1st Respondent did not show up on 15/7/2015 ·1Nhle the Applicant and the 2 nd Respondent v;rere represented in Court by Mr. IVIp'Naga Bernard Advocate and I\,fs Kinyasi Jacqueline Advocate respectively. Until 15/7/2015 the 1st Respondent had not yet filed his Counter Affidavit though had on the san1e day of hearing served a letter to this Court in.fanning that he ,7'as scheduled to appear before the Court of Appeal of Tanzania on the very day. The 2 nd Respondent did not object the Application. I have paid regard to the fact that the 2 nd Respondent does not oppose the Application and also that until the date fixed for hearing on 15/7/2015 the 1 st Respondent, ·who secured leave of this Court to file his Counter Affidavit, had not done so. That in1.pliedly was also either his decision not to oppose the Application or to frustrate the other legal processes arranged on the same matter in as far as the Applicant and the 2 nd Respondent are concerned. I therefore decided to rule out on the Application without v.raiting for the 1st Page 2 of 4 r Respondent ,who did not

following the procedure set out for one to seek adjournment or leave of the Court for doing any act arising from the ongoing Court proceedings. The Affidavit sworn in by Daniel Haule Ngudungi in support of the Application and the record as a whole have seized my attention. I found it factual that when the Resident Magistrate Court issued the complained of decisions and orders there were already in place the Civil Application No. 89 of 2014 which is pending for hearing in the Court of Appeal. Taking note of that fact and also that 'What is complained against are decisions and orders of this Court whose subject matter require to be legally determined by the legal process before the Court of Appeal, I grant the Application and quash and set aside the decisions and orders that have been issued in favour 20/7/2015 Coram: Dr. E.IVI. Feleshi, J. For the Applicant: Mr. Mpwaga Bernard, Adv. For the 1st Respondent: }- For the 2nd Respondent: Absent C.C.: Hadija Page 3 of 4 Mr. Mpwaga Bernard Adv.: My Lord, the matter is coming for Ruling. We are ready. Court: Ruling delivered Order: Application is granted 'th costs. \ i ((/ i I / 20/7/2015 Page 4 of 4

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Prepared on 14 October 2026 · Esheria