

IN THE HIGH COURT FOR ZANZIBAR

HOLDEN AT VUGA

CIVIL CASE NO. 07 OF 2013

CHECHEVULE LIMITED

APPLICANT

VERSUS.

1. KOPE MOSI
2. JOMBI JUMA
3. MACHANO FAKI
4. AME KOPI
5. LETE JUMA FAKI
6. FABIO UMBERTO
7. MS. SARA
8. HAFIDH
9. HON. ATTORNEY GENERAL
10. ZANZIBAR INVESTMENT PROMOTION AUTHORITY (ZIPA)
11. NORTH "A" DISTRICT COUNCIL ----- RESPONDENT.

RULING

Rabia H. Mohamed, J.

The applicant, Chechevule Limited through the service of his counsel Mr. Salim H. B.

Mnkonje from Zanzibar MMM Law Chambers, filed an application for temporary

injunction under section 70 (1) (c) and (e) of the Civil Procedure Decree Cap 8 and

Order XVIII rule 3, Order XLIV rule 2 of the Civil Procedure Rules Cap 8 and any other enabling provisions of the laws.

The 1st to 8th respondents namely Kope Mosi, Jombi Juma, Machano Faki, Ame Kopi, Lete Juma Faki, Fabio Umberto, Ms. Sara and Hafidh represented by the learned counsel Shaban Juma, 9th respondent is the Attorney General of Zanzibar, 10th respondent is the Zanzibar Investment promotion Authority (ZIPA) and 11th respondent is North "A" District Council.

The application is supported by an affidavit of Maskat Shineni Abdullah who is the Manager of the applicant herein.

From the affidavit deposition the historical background of the matter may briefly be stated as follows: the applicant owned a luxurious small resort within the locality of Matemwe in the North B district of Unguja. The 1st to 8th respondents are now building the houses within the 30 meters High Water Mark in front of the applicant's beacons which under the law with regard to environment is no mans land and no one is allowed to construct anything on it. The applicant is also claiming against the 1st to 8th respondent for the violation of his right to use that land which causes

inconvenience and is interfering with his right to enjoy the area, sea view and the beach. The applicant has joined the 9th to 11th respondents to be compelled by this court to execute their legal duties of stopping the construction, removing it and punishing the 1st to 8th respondents according to law. He has sued all the respondents for trespass on their land and their right to enjoy air and the sea view.

Before going into details in the submissions of all parties to this application I will start by discussing two affidavits. The first one is that of 1st to 8th respondent. Learned counsel Mbwezeleni also from Zanzibar MMM Law Chambers who appeared for the applicant argued against the 1st to 8th respondent's affidavit as incurable defective for the reason that it was deposed by 1st respondent Kope Mosi who is not an advocate nor that he was authorized by the 2nd to 8th respondent. Although in the first paragraph of the counter affidavit Kope Mosi, the 1st respondent affirmed that he was authorized by the 2nd to 7th respondent to depose the affidavit on their behalf.

Learned counsel Shaban for the respondents was of the different opinion in relation to the counter affidavit which he finds it to be proper since the first paragraph of the said counter affidavit shows that the 1st respondent was authorized to depose on

behalf of 2nd to 7th respondents. There is no any other document, which was brought to this court to prove that the 1st respondent was indeed authorized by the 2nd to 7th respondent to depose the affidavit in their behalf. To my understanding the said counter could have been a joint affidavit instead of the way it is now. As such I do concede with counsel Mbwezeleni that the counter affidavit of the 2nd to 7th respondent is defective.

Another affidavit, which I would like to discuss here, is that in support of this application. This affidavit is the one deposed by the Manager of the applicant Maskat Shineni Abdullah. The jurat in this affidavit does not contain the name of the Commissioner for oath, which makes the affidavit defective.in the case of **DPP v Dodoli Kafupi and Another, Criminal Revision No. 1 & 2 of 2008, CAT (Unreported)** it was stated:

" Total absence of the jurat or omission to show the date and place where the oath was administered or the affirmation taken or the name of the authority and or the signature of the deponent against the jurat renders the affidavit incurably defective."

This position was also discussed in the case of **Felix Mkosamali v. Jamal A Tamim, Civil Application No. 4 of 2012 CAT (Unreported), M/S Bulk Distributors Limited v. Happyness William Molel, Civil Application No. 4 of 2008 CAT (Unreported).**

Having discussed the above and the fact that the applicant affidavit in support of the application has the signature of the deponent but lacks the name of the person authorized under the law to administer oath, makes the jurat defective, which also makes the application incompetent.

I hereby strike out the application with costs.

Sgd: Rabia H. Mohamed

Judge

25/07/2013.

25/07/2013:

Coram: George J. Kazi ---- RHC.

Appellant: Mr. Mmadi, Advocate

Respondent No. 1 to 8 rep. by Mr. Abdalla Juma, Advocate

Respondent No. 9 Mr. Msafiri S/A

Respondent No. 10 Mr. Abdalla for ZIPA

Respondent No. 11- Absent.

Court: Ruling delivered in the presence of parties as appeared on the Coram.

Sgd: George J. Kazi

RHC

25/07/2013.

I hereby certify that this is a true copy of the Original.

Sgd. **GEORGE J. KAZI**

REGISTRAR

HIGH COURT

ZANZIBAR.

