

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 147 OF 2016**

**LISA E. PETER.....APPLICANT**

**VERSUS**

**AL-HUSHOOM INVESTMENT.....RESPONDENT**

**(Application for extension of time to file revision from the  
decision of the High Court of Tanzania  
at Dar es Salaam)**

**(Shangwa, J.)**

**dated the 18<sup>th</sup> day of February, 2016**

**in**

**Civil Appeal No. 146 of 2013**

-----

**RULING**

**13<sup>th</sup> & 20<sup>th</sup> September, 2016**

**MUSSA, J.A.:**

The genesis of the proceedings at hand is Civil Case No. 21 of 2003 which was instituted by the applicant against the respondent in the Resident Magistrates' Court of Dar es Salaam, at Kisutu. In the suit, the applicant sought redress for the negligence of the respondent's driver which allegedly arose from a road collision involving two motor vehicles owned by the parties. At the height of the suit, the trial court found the

respondent vicariously liable for the alleged negligent conduct of her driver.

Aggrieved by the decision, the respondent successfully preferred an appeal to the High Court. In its judgment and decree which were pronounced on the 18<sup>th</sup> February, 2016 the High Court (Shangwa, J.) reversed, quashed and set aside the trial court's decision. Discontented by the verdict, on the 17<sup>th</sup> May, 2016 the applicant lodged the present application seeking enlargement of time to enable her to institute revisional proceedings so as to impugn the High Court decision.

The application is by a Notice of Motion which is predicated under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is accompanied by an affidavit sworn by the applicant. The application is being resisted by the respondent in an affidavit in reply, sworn by Mr. Mafuru Mafuru who happens to be learned counsel for the respondent. Mr. Mafuru has additionally enjoined a Notice of preliminary points of objection seeking an order of the Court to strike out the applicant on the following grounds, namely: -

- "1. The affidavit's verification is not signed by the deponent.*
- 2. It lacks proper verification, to wit, the deponents means of knowledge or his (sic) source of information are not disclosed or even if disclosed are contradictory in material particulars."*

It is noteworthy that the preliminary points of objection, are centered on the proprieties of the applicant's affidavit which materially goes thus: -

#### **"VERIFICATION**

*what is stated under paragraphs 1 to 15 inclusive, save for paragraphs 6, 7, 11 and 12 is true to the best of my knowledge. Paragraph 6 and 7 is true to the best of information received, the source of which has been disclosed to the relevant paragraphs. Paragraph 11 is true to the best of the advice received from Mgare Advocate. Paragraph 12 is true to the best of the advise received and belief.*

*Verified at DSM this 9<sup>th</sup> day of May, 2016.*

*SWORN at DSM by the said LISA EDWARD PETER who is identified to me by Mgare, Advocate the latter being personally known to me in my presence on this 9<sup>th</sup> day of May, 2016.*

**Signed**  
DEPONENT

*BEFORE ME*

*Name: Edward Mtaki*

*Postal Address: 77123 DSM*

*Signature: **Signed***

*COMMISSIONER FOR OATHS."*

When the matter was called on for hearing before me, the applicant had the services of Dr. Chacha Murungu, learned Advocate, who was holding brief for Mr. Francis Mgare, also learned Advocate. Dr. Murungu informed the Court that Mr. Mgare is bereaved but his instructions are to proceed with the conduct of the hearing. On the adversary side, the respondent was represented by the already referred Mr. Mafuru.

Addressing the first point of objection, Mr. Mafuru drew my attention to the fact that the applicant did not append her signature at

the foot of the verification clause to signify her verification of the same. The learned counsel appraised that all what the applicant did was to append her signature on the jurat of attestation. Mr. Mafuru contended that the verification clause and the jurat of attestation relate to two distinct particulars to which a deponent is imperatively enjoined to separately put his/her signature abreast or at the foot of both particulars. To buttress his contention, the learned counsel for the respondent referred me to a learned treatise by a certain S. Parameswaran, Advocate, which is titled: **Law of Affidavits**, fourth edition.

Coming to the second point of the preliminary objection, Mr. Mafuru criticized the content of the verification clause in that, he said, the affidavit falls short of a proper verification inasmuch as, according to him, "*...the deponent's means of knowledge or his source of information are not disclosed or, even if disclosed, are contradictory in material particulars.*" To fortify the contention, the learned counsel referred me to another learned treatise titled: **Sakar's law of civil procedure**, eighth edition, as well as the case of **Salim Vuai Fom Vs The Registrar of Cooperative Societies and Three others** [1995] TLR 75. Mr. Mafuru urged that cumulative effect of the raised ailments is to

vitiate the applicants' affidavit and, accordingly, he prayed that the application be struck out with costs.

In his reply with respect to the first point of preliminary objection, Dr. Murungu cautioned that the principles governing affidavits are a distant distinct from those relating to pleadings under the Civil Procedure Code, Chapter 33 of the Revised Laws (the Code). The learned counsel for the applicant contended that Mr. Mafuru was seemingly importing the requirement of signature from the rules relating to pleadings. In this regard, Dr. Murungu was harbored with the view that, unlike Rule 15(3) of Order VI of the Code which imperatively requires pleadings to be signed, no such requirement entails an affidavit. To that extent, he charged, the applicants' signature which is appended abreast the jurat of attestation suffices and, for that matter, he concluded, all the essential ingredients of a valid affidavit were met. As to what constitutes the essential ingredients of an affidavit, Dr. Murungu referred me to the unreported Criminal Application No. 11 of 2008 – **DPP vs Dodoli Kapufi and Another.**

On the second point of the preliminary objection, the learned counsel for the applicant contended that the verification clause clearly expressed which paragraphs were predicated on the deponent's personal knowledge as distinguished from those which emanated from information or belief. As regards the statements based on information, Dr. Murungu further submitted that the deponent elaborately disclosed her source of information in the respective paragraphs. In sum, the learned counsel for the applicant urged that both the preliminary points of objection are without a semblance of merit and that the same should be overruled with costs.

Having heard the learned rival arguments from either side, I propose to first address the complaint relating to the lack of signature at the foot of the verification clause. For a better appreciation of the point of contention, I deem it apt to preface my determination with an overview of the principles governing affidavits and, more particularly, those relating to the subject of verification. To begin with, the essential ingredients of any valid affidavit were elaborately enumerated **DPP Vs Dodoli Kapufi** (supra) and, these are: -

- "(i) *the statement or declaration of facts, etc, by the deponent;*
- (ii) *a verification clause;*
- (iii) *a jurat and;*
- (iv) *the signatures of the deponent and the person who in law is authorized either to administer the oath or to accept the affirmation."*

If I may now single out the verification clause for more clarification, the purpose of the verification of an affidavit was persuasively and meticulously laid down by the Supreme Court of India in **A.K.K. Nambiar Vs Union of India** (1970) 35CR 121 where it was stated: -

*"The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to information received from persons or allegation may be based on records. **The importance of verification is to test the genuineness and authenticity of***



***allegations and also to make the deponent responsible for allegation. In essence, verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the absence of proper verification, affidavits cannot be admitted in evidence.*** [Emphasis supplied.]

I have supplied emphasis on the extract to underscore the premise that it is imperative for a deponent to append his/her signature below the verification clause so as to affirm the genuineness and authenticity of the deposed allegations as well to make the deponent assume responsibility for the allegations. As correctly expounded by Mr. Mafuru, a verification clause and a jurat of attestation are two distinct elements of an affidavit which should be signed separately. To say the least and, with respect to the learned counsel for the applicant, a verification clause is just as well required to be signified by signature.

To this end, I take the position that the affidavit at hand is invalid for lack of signature below the verification clause and, that being so, the


Notice of Motion is fatally vitiated. That would suffice to dispose of the application and, needless to have to belabor on the second point of preliminary objection. In the result, the application at hand is incompetent and, accordingly, the same is struck out with costs. It is so ordered.

**DATED** at **DAR ES SALAAM** this 16<sup>th</sup> day of September, 2016.

K.M. MUSSA  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.



  
P.W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**