

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 67 OF 2004

TROPICAL PESTICIDES RESEARCH

INSTITUTE PLAINTIFF

VERSUS

1) NATIONAL BANK OF COMMERCE (NBC) 1997 LTD

2) P S R CDEFENDANTS

R U L I N G

A.Shangwa,J.

On 1/6/2004, learned counsel for the plaintiff DR. Mapunda filed a suit on behalf of the plaintiff against the defendants. He did so by presenting a plaint.

On 2/6/2005, he informed the Court that he intends to pray for a default judgment as the 1st defendant had until on

the said date not yet filed its written statement of defence. He prayed the Court to fix a date of hearing his prayer.

Thereafter, the suit was adjourned for hearing his prayer on 11/7/2005. On that date, he informed the Court that he has filed a chamber application supported by affidavit in which he is praying for an order of a default judgment. His chamber application is dated 6/7/2005. It is supported by his own affidavit . DR Ringo for the 1st defendant filed a counter affidavit on 21/7/2005 which was sworn by the company secretary of the 1st defendant Mr. Godson Kiliza. DR. Mapunda filed a reply to the said counter affidavit on 15/8/2005.

Before hearing and determining DR Mapunda's application for a default judgment, DR Ringo for 1st defendant filed a chamber application supported by affidavit of Ernest Mbepera praying for orders to set aside this Court's

order granting leave to DR Mapunda to apply for a default judgment, and to grant the 1st defendant extension of time to file a written statement of defence. DR Mapunda filed a counter affidavit to the affidavit of Ernest Mbepera. He did so on 16/8/2005.

On 29/8/2005, DR Ringo for the 1st defendant prayed for a date of hearing his application. On 29/9/2005, DR. Mapunda for the plaintiff informed the Court that he has a preliminary objection to make against the 1st defendant's application filed by DR Ringo. On the same date, I ordered that DR Mapunda's preliminary objection should be argued by way of written submissions. It was so argued.

In his written submissions, DR Mapunda objected to DR Ringo's application on four grounds. First, that the application is not signed, not dated and is not stamped or sealed.

Second, that the affidavit in support of the application is incurably defective because the date on which it was made is not shown. Third, that the application is bad in law for failure to cite a specific provision of law under which it was brought. Fourth, that the application is invalid for citing wrong provisions of law relied upon.

In my view, the first two grounds of preliminary objection raised by DR Mapunda against DR Ringo's application filed on behalf of the 1st defendant are sufficient to dispose of DR Mapunda's preliminary objection raised on behalf of the plaintiff.

It is true as submitted by DR Mapunda that the 1st defendant's chamber application is not signed and is not dated. This is a very big defect. Any document which is not signed or dated by its maker or a person to whom it belongs has no legal effect.

Apart from that it is true as submitted by DR Mapunda that the affidavit of Ernest Mbepera in support of the 1st defendant's application does not bear the date on which it was taken. This is another very big defect which makes things worse. It arises from non compliance with the mandatory provisions of S. 8 of the Notaries Public and Commissioners for Oaths Act, Cap. 12 Rev. Edn 2002 which provides that :

"Every notary public and commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made".

It is well established by a good number of authorities that non compliance with the above quoted mandatory provisions of law renders the affidavit defective. One of the leading

authorities on this point is the case of **D.P. SHAPRIYA & CO; LTD VS. BISH INTERNATIONAL. Civil Application No. 53 of 2002 (CAT) (DSM) (unreported)** in which his Lordship Justice Ramadhani, J.A.

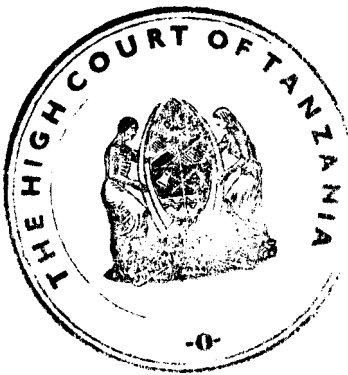
Said that:

"The section categorically provided that the place at which an Oath is taken has to be shown in the jurat. The requirement is mandatory: Notary Publics and Commissioners for oaths shall state truly in the jurat of attestation at what place and on what date the oath or affirmation is taken or make".

In my opinion, the two defects which I have pointed out above renders the 1st defendant's application incompetent. With due respect to DR. Ringo, I am sorry to say that the two defects are not curable and this court

cannot invoke its inherent powers under S.95 of the Civil Procedure Code, 1966 to cure the same.

Therefore, I uphold the plaintiff's preliminary objection and I dismiss the 1st defendant's application with costs.



A. Shangwa
A. Shangwa, J.

24/5/2006.

Delivered in open Court this 24th day of May, 2006.

A. Shangwa
A. Shangwa,

JUDGE

24/5/2006.