

**IN THE HIGH COURT OF TANZANIA**

**AT DAR E SALAAM**

**CIVIL APPEAL NO. 144 OF 2005**

**/MEDARD KALUNGA .....APPLICANT**

**VERSUS**

**TANESCO LIMITED.....RESPONDENT**

**RULING**

**MWARIJA, J.**

The respondent has raised a preliminary objection in this application for leave to appeal to the Court of Appeal against the decision of this court (Nyerere, J) delivered on 5/3/2009. The objection raised is to the effect that the application is incurably defective for lack of the deponent's signature on the verification to the affidavit.

Following the applicant's request which request was agreed upon by Mr.Urasa, learned Counsel for the

respondents, I ordered that the objection be argued by way of written submissions.

Submitting in support of the preliminary objection, Mr. Urasa argued that the applicant's affidavit is incurably defective because it does not contain a verification clause signed by the deponent. The learned counsel contended that the deponent only signed the jurat but did not sign the verification clause. He cited the cases of **Wananchi Marine Products (T) Ltd v Owners of Motor Vessels** , Civil Case No. 123 of 1996 (unreported) and **B.P. Tanzania Ltd v Nyanza Co-operative Union** (1984) Ltd, Com. Case No. 49 of 2001 to emphasise the argument that a deponent must separately sign the jurat and verification clause because the two serves different purposes. In that vein, the learned counsel urged the court to strike out the application on the ground that it is supported by a totally defective affidavit.

In response to the submissions by the learned counsel for the respondent, the applicant started by making trivial and at times misconceived statements. He relied, for example, on the literal meaning of the word “strike” in his attempt to show that the objection is without merit. This might have been due to misconception by him or the person who prepared the submission on his behalf of the use of the word “strike” in legal parlance, which means an order by the court which has the effect of terminating the proceedings.

As to the essence of his submissions however, the applicant argued, firstly, that the verification clause in his affidavit complies with the requirements set out under O.XIX r3(1) of the Civil Procedure Code, Cap 33 R.E. 2002 (the CPC). Further, citing the decisions in unreported cases of **China Henan International Co-operation Group v Salvand K.A.Rwegasira**, Civil Refence NO. 22 of 2005

(CA – Dsm) and **Alloys Mselle v the Consolidated Holding Corporation**, Civil Appeal No. 11 of 2002, the applicant urged the court to dismiss the objection on the ground that it relied on wrong provisions of law to support his arguments. He added that even if there is a defect, that would not occasion any injustice to the parties and as such the court can exercise its inherent powers to order an amendment. He stressed that it would not be for the interests of justice to find the application incompetent on a technical ground.

Having considered the submissions and after having gone through the affidavit sworn by the applicant, I find that, although the affidavit does not contain a verification under a separate clause, paragraph 8 thereof contains the statement which in effect is a verification.

The paragraph reads as follows:-

*“(8) That all what is stated under paragraphs 1,2,3 and 5 are true to the best of my own personal knowledge. What is stated under paragraph 4,6 and 7 is based on the advice of our (sic) advocate which advice I verily believe to be true ”*

That statement complies with the provisions of O. XIXr .3(1) of the CPC which provides as follows:-

*“ Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove except on interlocutory applications, on which statements of his belief may be admitted”.*

The main issue is whether a signature which appears on the jurat of attestation serves to authenticate the verification. The contention by the learned Counsel for respondent is that the deponent ought to have signed both the verification clause and the jurat. As observed by this court in the **Wananchi Marine Products** (supra), cited by

Mr. Urasa, learned Counsel, the best practice is for the affidavit to have a separate verification clause headed “VERIFICATION” immediately after the last paragraph of the affidavit and under that heading, a deponent has to make a verification statement in compliance with O.XIXr. 3 (1) of the CPC and sign it. Although that is the practice, the omission to do so does render the affidavit fatally defective. The reason is that the omission is one of a format than substance. The applicant had deponed to the facts stated in the affidavit, made a verification in paragraph 8 of his affidavit and at the ~~and~~ and did swear to the truth of all his statements in the affidavit. The fact that he did not sign the verification first and then the jurat of attestation does not render the affidavit incurably defective.

This position was put clear in the case of **Anna Makanga v. Grace Woiso**, Civil Reference No. 21 of 2006 (CA – Dsm) (unreported). In that case the applicant, like in

this case, did not make a separate verification clause in his affidavit. She only embodied her verification in her last paragraph of the affidavit (paragraph 11) as follows:-

*“ That what is stated herein above is true to the best of my knowledge save for the contents of paragraph 7 which is true according to the court record”.*

Upon a preliminary objection based on that omission, the court of Appeal held as follows:

*“ we are of the view that the above statement constitutes verification – verification is simply a final declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the statement in the document! (see definition of verification per Blacks Law Dictionary, 7<sup>th</sup> Edition). The deponent, in paragraph 11 of the affidavit is swearing to the truth of the preceding paragraphs. He had gone further to indicate that the facts in the whole document are true to the best of his own knowledge save for*

*paragraph 7, which is from the court record.  
The jurat shows that the affidavit was sworn,  
verified and dated at Dar es Salaam on 15<sup>th</sup>  
September, 2006 before a Commissioner of  
Oaths”.*

The situation in the present case being similar, the preliminary objection raised by the respondent in this application lacks merit. In the final analysis and for the reasons stated above the preliminary objection is hereby dismissed.

  
A.G. MWARIJA

**JUDGE**

**4/4/2011**



4/04/2011

Coram: Hon A.G. Mwarija, J.

For the Appellant – Absent

For the Respondent – Ms Joyce Mwakijale

CC: Butahe

Ruling delivered.

A.G. Mwarija

**JUDGE**

**4/4/2011**

**Court:** The applicant to be notified of the ruling

A.G. Mwarija

**JUDGE**

**4/4/2011**