

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TANGA

LAND CASE REVISION NO.2 OF 2011

(From the Decision of the District Land and Housing
Tribunal of Tanga District at Tanga In Land Case/Land
Application No.171 00-of 2009)

ARIF MAWJI.....APPLICANT

VERSUS

PRADEEP KAMANUJ

(As administrator of the estate of the late

JAGJID KAUR NIRMAL

SINGHRESPONDENT

RULING

Date of last order: 22/07/2011

Date of ruling 29/07/2011

Mussa, J;

This matter originates from Application No. 171 of 2009 instituted in the Tanga district land and housing tribunal. In those proceedings, the respondent herein successfully sued the applicant herein for vacant possession of certain premises situate at Bombo area, within Tanga city. The applicant was aggrieved; whereupon, he preferred Land Appeal No.21 OF 2011 which is still pending in this court. In the meantime on the 12th July, 2011; the trial Tribunal issued an eviction order against the applicant through its broker, Jupiter Action Mart. In the result; so it is alleged, the applicant was forcefully ejected from the premises on July 19th 2011.

Thus, it is against the foregoing backdrop that this application was mounted July 20th 2011. the same is, obviously, a desperate effort through which the applicant seeks to move this court, first, to revise the eviction order

and; second to issue an order for the maintenance of the status quo pending the determination of the sub-judice appeal. The application is by chamber summons taken out under the provisions of section 41 and 43 (1) (b) of the Land Disputes Courts Act, Chapter 216 of the laws. As is customary, the same is accompanied by an affidavit; duly affirmed by the applicant. Before me, the applicant was represented by Mr. Mlawa, learned advocate; whereas, on the opposite side, there was Mr. Akaro, also learned advocate. As it turned out, the latter greeted the application with scorn upon a double-edged preliminary point of objection:-

(a) That the application is incompetent on ground that neither the chamber summons nor the supporting affidavit have been signed/endorsed by the drawer thereof

(b) That the supporting affidavit is further defective for not showing the place of verification.


At the hearing, Mr. Akaro was opportune to elaborate on the raised points of grievance. It, then, came to light that on the first limb of the objection; counsel had in mind the column at the foot of the respective documents running the heading: **DRAWN AND FILED BY:** True; aside from an indication thereat that the respective documents were drawn and filed by M & S Law Associates whose stamp is appended; the usual endorsement or signature abreast the column is no show. On the premises, Mr. Akaro engaged the contention that the non-endorsement is not in keeping with the mandatory requirements of section 43 and 44 (1) of the Advocates Act, chapter 341 of the laws. To that end, he concluded, on account of being in the company of defective documents, this court is not properly seized of the application. To fortify his argument, learned counsel referred to unreported decision of the Court of Appeal comprised in **MZA Civil Application No.2 of 2005 – Ashura Abdulkadri Vs. The Director Tilapia Hotel**. In that case, it was held that “endorsement” enjoins the drawer of an instrument appending his/her signature there on. As regards the second limb of the preliminary point of objection; Mr. Akaro’s arsenal were directed at the verification clause; counsel charged, as to exactly where the verification took

place. Admittedly, learned counsel was at a loss to refer to any specific rule, authority or practice where an affidavit was condemned for not indicating the place of verification. Still, counsel urged that an affidavit with such ailment is not in good taste.

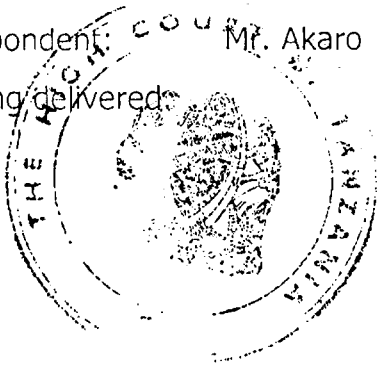
Apparently caught napping, Mr. Mlawa had little in response. All he said with respect to the first limb of the point of objection; was that the official stamp of the law from sufficiently satisfied the statutory requirement. Coming to the second limb, counsel submitted that it is not quite the law that the place of verification must be manifest upon an affidavit. I should imagine that counsel sought to impress that there is not specific requirement with respect to affidavits; similar to that obtaining in pleadings. It is noteworthy that, as regards the latter, Rule 15(3) of Order VI of the Civil Procedure Rules specifically requires the verification to be signed by the person making it with such details as to the date and place on or at which the same was signed. If I understood him well, Mr. Mlawa sought to suggest that much as it is not specifically required of affidavits; it is not the rule that the place of verification must be manifest abreast the verification clause.


Addressing the first limb of objection; I must say, with respect to counsel for the applicant; that *Ashura*, cited by his learned friend, is directly on the point and tells it all. Perhaps it is well worth the remark that in a previous decision of my own; I was, actually, opportune to pay complete homage to *Ashura* to which I am bound, any way. That was in the unreported Tanga **Registry (PC) Civil Appeal No.5 of 2008 – Robert Mhibu vs. Joyce Shellukindo**. Passing on, then, to the second limb of objection; apparently Mr. Akaro is not alone in detesting a verification that has no showing where it was made. Closely related, is an unreported decision, again, of Tanga Registry comprised in **Misc. Civil Application No. 16 of 2007 – Ally Htibu Koroboto Vs. Mwanaukuta Zuberi**. In that decision, **Shayo, J**; had to grapple with an affidavit whose verification did not indicate the place and date of signature. As it were, the affidavit was found incurably defective and shown the exit door. When all is said

and done; the present setting dovetails with the those comprised in Ashura, Robert and Ally. That being so; needless to have to drum about the obvious: that the application before me is incompetent. In the result, the same is struck out with costs. Order according.


K.M. MUSSA, J;
27/07/2011

Date: 29/09/2011
Coram: Musa, J;
Applicant: Present
Respondent: Mr. Akaro
Ruling delivered:




K.M. MUSSA, J;
27/07/2011