

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 1 OF 2012

- 1. HAMAD RASHID MOHAMED**
- 2. SHOKA KHAMIS JUMA**
- 3. DOYO HASSAN DOYO**
- 4. JUMA SAID SANANI**
- 5. YASSIN JOSEPH MROTWA**
- 6. KIRUNGI AMIR KIRUNGI**
- 7. DONI WASIRI MNAMANI**
- 8. MOHAMED FAKI ALBADAWI**
- 9. TAMIM OMARI TAMIM**
- 10. NANJASE HAJI NANJASE**
- 11. MOHAMED MASSAGA**

. APPLICANTS

VERSUS

**THE REGISTERED TRUSTEES OF
THE CIVIL UNITED FRONT
(CUF-CHAMA CHA WANANCHI) RESPONDENT**

Date of last order - 18/4/2012

Date of Ruling - 24/4/2012

R U L I N G

This preliminary objection was raised by learned counsel for the Respondent, Mr. Twaha Issa Taslima. It

was filed in court on 27th January, 2012. It is against the hearing of an application for ordering the members of the National Council of the Registered Trustees of the Civic United Front (CUF-Chama cha Wananchi) to appear in court and show cause as to why they should not be committed to civil prison for disobeying the lawful court order made on 4th January, 2012 requiring them to refrain from suspending or expelling the Applicants from being members of the Respondent's party pending the hearing of the application interpartes and for declaring the Respondent's proceedings and resolutions which were conducted and passed on 4th January, 2012 as null and void.

Mr. Twaha Issa Taslima prayed that the aforesaid application should be dismissed in its entirety with costs on grounds that the affidavit of the 1st Applicant HAMAD

RASHID MOHAMED is bad in law as it contravenes O. XIX r. 3 (1) of the Civil Procedure Code [Cap. 33 R. E. 2002].

In support of his preliminary objection, Mr. Twaha Issa Taslima submitted that the 1st Applicant did not reveal the source of information as to the time of expelling the Applicants. He said that it could not be out of his own knowledge as stated at paragraph 4 of his affidavit that the Applicants were expelled from membership at 15.55 hours because according to what he says at paragraph 4 of his affidavit, he left the meeting room at 14.25 hours when he was ordered to defend himself but he refused. Mr. Twaha Issa Taslima contended that as the 1st Applicant did not reveal the source of information as to the time when the Applicants were expelled, his affidavit should not be acted upon.

In support of his contention, Mr. Twaha Issa Taslima cited the case of **Salima Vuai Foum V Registrar of Cooperative Societies and Three Others** (1995) TLR 75 in which it was held that where an affidavit is made on information, it should not be acted upon by any court unless the sources of information are specified.

In reply, learned counsel for the Applicants, Mr. Stolla submitted that the preliminary objection raised by counsel for the Respondent is baseless and unfounded in law. He said, the 1st Applicant was present when the order of expelling him and others from their party membership was issued by the National Council of CUF and made public through the council member one Julius Mtatiro. Alternatively, counsel for the Applicants submitted that non disclosure of source of information on verification clause of an affidavit is not fatal.

In rejoinder, Mr. Twaha Issa Taslima for the Respondent, submitted inter-alia that the defect in this case is about concealing the source of information where it is apparent that the deponent must have received the information from someone else but has decided to say that he knows of the fact as of his own knowledge.

The provision of law which is alleged by counsel for the Respondent, Mr. Twaha Issa Taslima to be contravened by the 1st Applicant's affidavit reads as follows and I quote:-

“O.XIX r. 3 – (1) 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.”

As it can be seen, the above quoted provision of law provides for matters to which affidavits have to be confined namely facts as the deponent is able of his own knowledge to prove. At paragraph 9 of his affidavit against which the objection originates and revolves, the 1st Applicant states that the acts of the Respondent to proceed with her mission of expelling the Applicants from membership was done at 15.55 p.m. while there was court order served to the Respondent on 4th January, 2012 at 15.05 hours.

In the verification clause of his affidavit, the 1st Applicant states inter-alia that all what is stated in paragraphs 4, 8 and 9 is true to the best of his own knowledge. This means that to the best of his own knowledge he is able to prove the following facts.

First, that on 4th January, 2012, he was summoned to appear before the National Council Meeting at 14.25 p.m.

to defend himself and that he informed the members of the meeting that the High Court of Tanzania at Dar es Salaam had given a ruling requiring them to refrain from expelling or suspending the Applicants from membership.

Second, that despite the service of the said ruling to the Respondent, the National Council proceeded with their diabolic mission of expelling the Applicants from the membership of the Respondent's party.

Third, that the acts of the Respondent to proceed with her mission of expelling the Applicants from membership was done at 15.55 hours while there was court order served to the Respondent on 4th January, 2012 at 15.05 p.m. which she disobeyed.

The above listed facts are, all of them, contained in the 1st Applicant's affidavit. I hold therefore that the 1st Applicant's affidavit is good in law and it does not at all

contravene the provision of O. XIX, r. 3 – (1) of the Civil Procedure Code as charged by Mr. Twaha Issa Taslima for the Respondent.

So far, one has to bear in mind that the point which is contained in the verification clause of the affidavit in issue is not whether the 1st Applicant out of his own knowledge understands that the Applicants were expelled from membership on 4th January, 2012 at 15.55 hours but it is whether he is able of his own knowledge to prove that the Applicants were expelled from membership at 15.55 hours. The 1st Applicant verifies that he is able to prove so out of his own knowledge.

Mr. Twaha Issa Taslima appears to be telling this court that the 1st Applicant's affidavit is defective because of his lie for verifying that to the best of his knowledge the Applicants were expelled from membership at 15.55 hours

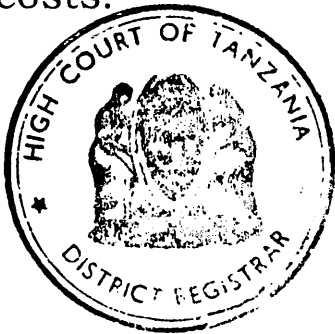
whereas at that particular time, he was not in the meeting and that therefore except from information, he could not know of his own knowledge the exact time when they were expelled from their party membership.

As already mentioned, O. XIX r. 3-(1) of the Civil Procedure Code provides for matters which are supposed to be contained in the affidavit. That is, facts which the deponent is able of his own knowledge to prove and not lies. As a matter of fact, the 1st Applicant states in his affidavit that he is able of his own knowledge to prove that the Applicants were expelled from membership at 15.55 hours and nothing more. If he is telling a lie, he will be cross-examined during the hearing of his application.

It is common knowledge that the defects which may render an affidavit to be defective are arguments, prayers, reasons and where the jurat does not show the date when

or the place where the affidavit was taken. The 1st Applicant's affidavit does not suffer any of those defects. As I have already said, it is good in law.

For these reasons, I overrule the preliminary objection raised by counsel for the Respondent, but I make no order as to costs.




A. Shangwa

JUDGE

24/4/2012

Delivered in open court this 24th day of April, 2012 in the presence of Mr. Kerario for Mr. Twaha Issa Taslima for the Respondent.


A. Shangwa

JUDGE

24/4/2012