

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT IRINGA**

**MISCELLANEOUS LAND CASE APPLICATION NO. 39 OF 2015**

**CASTORY MASONDA ----- APPLICANT**

**VERSUS**

**JOHN CHELESI ----- RESPONDENT**

**RULING**

**5<sup>th</sup> July, 2016 & 15<sup>th</sup> December, 2016**

**KIHWILO, J.**

There is before me an application under Section 38(1) of the Land Disputes Courts Act, No. 2 of 2002 and Section 95 of the Civil Procedure Code, Cap 33 Revised Edition 2002 (henceforth "CPC") for this court to grant leave for the applicant to lodge the appeal out of the time prescribed by law. The Application is supported by an Affidavit of Castory Masonda.

Against that application the Respondent, through Mr. Mwamgiga, learned counsel has raised a notice of preliminary objection, to wit:

- (i) The Verification Clause is defective for not containing the date when it was verified.*
- (ii) The Verification clause is incurably defective for not disclosing the information supplied to the applicant.*
- (iii) The Chamber Summons is incompetent as the same has not been signed by the Deputy Registrar.*
- (iv) The application is incurably defective as it contravenes the mandatory provisions of Rule 7(1) of the Court Fees Rules.*

As the Applicant did not concede to the preliminary objection the same was fixed for hearing of the oral submission and the present is the ruling in respect of the preliminary objection. While Ms. Kitta, learned counsel appeared for the applicant, the respondent was under the services of Mr. Mwamgiga, learned counsel.

In support of the grounds of objection Mr. Mwamgiga submitted that the verification clause does not comply with order VI Rule 15(3) of the CPC that requires that a verification clause should be signed, dated and indicate the place. He went on to submit in respect of the second ground that since the verification clause does not disclose the source of information the effect is to strike out the affidavit. To buttress further his argument he cited the case of **Sina Umba V National Insurance Corporation (T) Ltd and Another**, Civil Application No. 50 of 2003, Court of Appeal of Tanzania at Dar es Salaam (unreported). Amplifying in support of the fourth ground of appeal Mr. Mwamgiga submitted that the application has contravened the Court Fees Rules which requires any application to be paid Tshs. 50,000/= while the applicant did not pay anything before the Court. He therefore, prayed that the application should be dismissed with costs.

In response Ms. Kitta, learned counsel for the applicant contended that the affidavit was signed by the applicant on 17<sup>th</sup> August, 2015 however, the affidavit had no space for the date and that the omission was not fatal to render the application incompetent as the date appears on the jurat part of the affidavit. On the second ground of the objection Ms. Kitta

conceded that the Deponent stated that some of the information is from his lawyer that to her suffices as the law requires only the source of information to be disclosed. Ms. Kitta went on further to respond on the fourth ground of objection by arguing that the applicant paid Tshs. 10,000/= vide ERV No. 6295334 of 17<sup>th</sup> August 2015 and as to how much has to be paid the assessment is done by the Court. She therefore strongly argued that the application is proper.

In my view the gist of the preliminary point of objection hinges on none compliance of the affidavit to the mandatory requirement of the need for the Deponent to disclose the source of the information.

I have painstakingly gone through the affidavit several times in order to establish the validity of the preliminary objection and in particular to see whether there is any source of the information. In so doing I was interested to see the verification clause that is the core part when it comes to establishing the source of the deponent's information. The verification clause subject of the instant objection reads;

*"All that has been stated in paragraph 1,2,3,4,5,6,7 and 9 above is true to the best of my own knowledge and paragraph 8 is according to the information received from my lawyer."*

In my strong opinion Ms. Kitta was totally misguided and misconceived when she argued that it suffices to say that the source of the information is from the lawyer since the law only requires the source of information to be disclosed.

In my view there is considerable merit in Mr. Mwamgiga's submission in that a blanket reference to "my lawyer" is insufficient disclosure. This position was stated in the case of **Sina Umba** (supra) in which the court stated as follows:

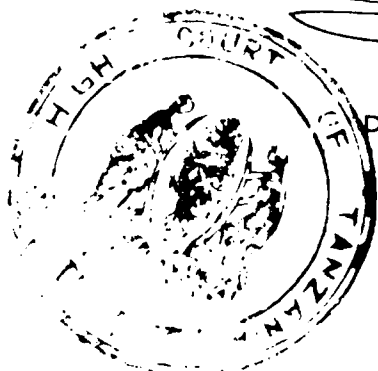
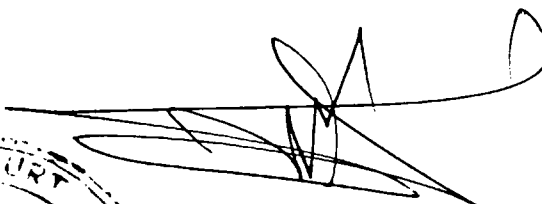
*".....It is true that the affidavit in question was drawn and filed by Kashumbugu, Sekirasa & Co. Advocates. And in his oral submissions Mr. Kashumbugu elaborated that the information was from his firm of advocates. The question is was this sufficient disclosure? I do not think so. A blanket reference to "my advocates"*

*is, in my considered view, insufficient disclosure. The deponent should have specifically mentioned the name of the advocate who was the source of the information/advice in paragraph 4.....”*

In the result, the preliminary objection raised by the respondent's counsel Mr. Mwamgiga has merit in that the affidavit in support of the application is incurably defective hence the application has no legs to stand on and therefore is hereby dismissed with costs.

For the above circumstances, I find no reason to discuss the other grounds of preliminary objection because doing so will only serve an academic purpose that I am not prepared to do so.

It is so ordered.



P.F. KIHWELO  
**JUDGE**  
12/12/2016

Ruling to be delivered by the Deputy Registrar on 15<sup>th</sup> December,  
2016.

