

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 688 OF 2016

(Originating from Civil Revision No. 49 of 2008 of the High Court of Tanzania,

(Hon. Justice Shangwa, J.)

EDWARD MSAGO.....APPLICANT

VERSUS

DRAGON SECURITY SERVICE LTD.....RESPONDENT

R U L I N G

14 Dec.2017 & 9 Mar., 2018

DYANSOBERA, J:

In this application filed under section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E.2002] and section 14 (1) of the Law of Limitation Act [Cap. 89 R.E.2002] and any other enabling provisions of law, the applicant is seeking against the respondents the following orders:

1. That this Honourable Court be pleased to grant extension of time for the applicant to file an application for revision of to the Court of Appeal of Tanzania against the ruling of the High Court

of Tanzania Dar es Salaam Registry delivered by Honourable Justice Shangwa on 28 April, 2009 in Civil Revision No. 49 of 2008.

2. Costs to follow event

3. Any other order(s) this Honourable court may deem fit and just to grant.

In support of the application an affidavit has been filed by the applicant. The application has been resisted by the respondent who has filed a counter affidavit. On 27th day of December, 2016 the applicant filed a reply to the counter affidavit noting the contents of paragraphs 1, 4 and 8 but disputing the contents of paragraphs 2, 3, 5, 6, 7 and 9 of the respondent's counter affidavit.

Besides, replying to the respondent's counter affidavit, the applicant has raised a preliminary objection notice of which was filed on 27th day of December, 2016 on the ground that 'the respondent's counter affidavit is incompetent for being improperly drawn and the applicant shall pray that the application be granted unopposed.

On 12th day of October, 2017 when the matter came for hearing of the preliminary objection, the applicant stood on his own, unrepresented while Mr. Mlelwa, learned counsel stood for the respondent.

Arguing in support of the preliminary hearing, the applicant told this court that the respondent's counter affidavit is incurably defective on the grounds that, first, that, on the first page of the counter affidavit there is a name of the deponent for the company and according to the applicant the company cannot swear an affidavit. Second, that at page 2 of the counter affidavit, there is a signature of Meck Peter Hokororo who did not identify him to be the deponent; that he did not introduce himself he was swearing for whom and in what capacity.

Replying to this preliminary objection, Mr. Mlelwa told this court that in this civil application, there is an applicant and a respondent and the company is known by being either a respondent or an applicant and that in this application, the deponent is the respondent and Meck Peter Hokororo is the owner of the company and the respondent. He pointed out that the preliminary objection lacks merit and should be dismissed.

The applicant in a rejoinder, maintained that he has explained what the procedure is. When prompted to state which law has been contravened by the respondent, the applicant replied that he cannot tell which law has been contravened.

I think the preliminary objection has no legal merit. First, it is doubtful if the objection raised by the applicant qualifies to be a real preliminary objection. To be regarded as a preliminary objection, the point

concerned must raise a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct and if sustained will determine the matter. in the instant application, there is nowhere suggested that the objection raised are pure points of law.

Second, it is not suggested that the counter affidavit in question has contravened any legal requirement such as the provisions of Order XIX Rule 3 (1) of the Civil Procedure Code, [Cap. 33 R.E.2002].

Third, there is no suggestion that the counter affidavit the applicant is seeking to impugn has either no verification or has a defective jurat of attestation.

I have scrutinised the respondent's counter affidavit and I am satisfied that it has complied with the law particularly Order XIX Rule 3 (1) of the Civil Procedure Code, Cap. 33 R.E. 2002 which provides that:

“Order XIX

Rule 3- (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory, on which statements of his belief may be admitted:

Provided that the grounds thereof are stated”.

It is trite that the contents of the affidavit must be statements of facts, which should be based on the personal knowledge of the deponent or from information which the deponent believes to be true. Besides, an affidavit should also not contain extraneous matters by way of objection, prayer, legal argument or conclusion. This requirement was emphasised in the

case of **Uganda v. Commissioner of Prisons, ex parte Matovu** [1966] E.A.514 it was stated that:

“...as a general rule of practice and procedure and affidavit for use in court being a substitute for oral evidence should only contain statements of facts and circumstances to which the witness deposes either of his own personal knowledge or from information which he believes to be true such an affidavit should not contain extraneous matters by way of objection or prayer or legal argument or conclusion.”

The counter affidavit of the respondent qualifies in all respects as a legal document to be acted upon.

For the reasons given, I decline to sustain the preliminary objection. It is rejected.

This application shall proceed to a hearing.

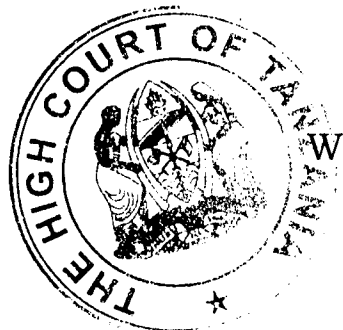


W.P. Dyansobera

JUDGE

9.3.2018

Delivered this 9th day of March, 2018 in the presence of the applicant in person and Mr. Mlelwa, learned counsel for the respondent.



W.P. Dyansobera

JUDGE