

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT COURT OF BUKOBA

AT BUKOBA

CRIMINAL APPLICATION No.5/2017

(Arising from Criminal appeal No. 1/2014 originating from Criminal Case

No. 126/2014 at Katoro Primary Court)

GODEBELTHA JOEL ----- APPLICANT

VERSUS

GEOFFREY PESHA ----- RESPONDENT

RULING

21/6/2018 & 16/8/2018

Kairo, J.

This ruling is the result of the application by the Applicant for an extension of time to lodge her appeal out of time and any other order this court would deem just to make. The application is preferred under section 14 of the Law of Limitation Cap 89 Act RE 2002 and any other enabling provision of the law. As usual the application is supported by an affidavit sworn by the

Applicant. After the filing of a counter affidavit by the Respondent, the Applicant raised two points of preliminary objection as follows:-

1. That the counter affidavit is defective and bad in law as it contains a defective verification clause.
2. That the Deponent's affirm is not competent as it lacked the address of the commissioner for oath/magistrate.

In the event the Applicant prays this court to sustain his P.Os and reject the counter affidavit.

The parties agreed to dispose this preliminary objection by way of written submission. A leave to that effect was granted. Both parties are self represented.

In her submission, the Applicant contended that the purported counter affidavit filed by the Respondent doesn't qualify to be so called for being bad in law thus incompetent as it contravened Order VI R 15 (2) of the CPC Cap 33 RE 2002. She went on that the said counter affidavit did not specify in the verification clause as which paragraphs were pleaded out of the deponent's own knowledge and which ones were out of his belief.

The Applicant went on that in the 2nd limb of objection, the counter affidavit is incompetent for want of the address of the commissioner for oath thus contravenes section 44 (1) of Advocates Act Cap 341 RE 2002. She concluded that the same deserves to be expunged from the court record with cost.

In his reply, the Respondent argued that the submission advanced by the Applicant have no merit. The Respondent went further to attack the application itself instead of addressing the P.O. raised. It is the finding of this court that the submission was prematurely given and thus irrelevant in resolving the issues as to whether the P.Os raised are sustainable or not.

In his rejoinder, the Applicant repeated what she has stated in her submission in chief. As earlier stated the issue for determination is whether the P.Os are sustainable.

I will starting with the first limb of the PO wherein the Applicant has argued that the verification part of the counter affidavit of the Respondent didn't state which paragraphs are out of his own knowledge and which ones are out of his belief. Going through the counter affidavit under verification clause I observed the same to have been couched as here under:-

" I Respondent being the Respondent in this application do hereby certify that what has been stated in above paragraphs 1,2,3,4,5, and 6 are to the best of my person knowledge and belief".

Order VI R 15 (2) gives guidance on how the verification of the pleadings are required to be done and wish to quote:-

15 (2) "the person verifying shall specify by reference to the numbered paragraphs of the pleading what he verifies of his own knowledge and what he verified upon information received and believed to be true".

Applying the given provision to the verification clause of the counter affidavit under attack, it is true that the Respondent didn't state or categorize which information are out of his knowledge and which are out of his belief, as such the said verification clause contravenes the requirement of Order VI R 15 (2) of the CPC (supra) as rightly submitted by the Applicant. The provision used the term "**shall**" which means the requirement is mandatory as per Interpretation of Laws Act No. 1 RE 2002 section 53(2).

Legally the omission has the effect of rendering the affidavit defective; as such legally there is no counter affidavit before the court. The only remedy is to expunge it off the court record as I hereby do.

Having so concluded, I am remained with nothing to refer to so as to address the 2nd limb of the P.O. For the reason afore stated, the 1st objection is sustained and the counter affidavit is hereby expunged from the court record for want of proper verification clause


Judge

