

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 580 OF 2019

(Originates from Civil Case No. 7 of 2017 in the District Court of Kilombero at
Ifakara, Morogoro)

FINCA MICROFINANCE BANK LIMITED..... APPLICANT

VERSUS

PETER MAKANJI.....RESPONDENT

10/06/2020

Coram: Hon Ebrahim, J.

For the Applicant - Advocate Barton Mayage and
Beatus Malawa

For the Respondent - Advocate Bageni Elija

CC: Neema

Advocate Mayage: the matter is coming for hearing.

Advocate Bageni: I am ready to proceed.

Sgd: R. A. Ebrahim

JUDGE

10/06/2020

HEARING OF THE PRELIMINARY OBJECTION

Advocate Bageni: The points of objections are 6 limbs. The garnishee order dated 11th October 2019, arising from Civil Case No. 7/2017, the garnishee order was fully executed on 30th October 2019. There is nothing to lift. Then the application serves no useful purpose thus litigation should come to an end.

Second point of objection is that the affidavit contains extraneous matters, legal arguments and prayers. Para 4 of affidavit the phrases "for the interest of justice", "a call for effect are legal arguments contrary to the law.

Para 5 phrases "which is supposed to be granted for reasons unknown" they are extraneous matters opposing principles of affidavit. In para 6 it contains the same legal arguments. Same defects are on para 8 'taking into account that', "the judgment has no justification" etc. It also contains legal arguments and conclusion.

At para 9 – “Suspicious conduct are vividly, the file not being see,” “all are meant to perpetrate justice....”.

At par 10 – “therefore The application has merit and I pray.....”.

At para 11- “a banks stands to collapse.....this application has b likelihood of being granted”. I refer to the case of **Uganda Vs Commissioner of Prison, Ex-parte Matovir (1966)** EALR 514.

3rd ground:- My concern as per amendments of Written Laws and Miscellaneous Amendment Act No. 2/2016, the name of attesting officer should be inserted at jurat of attestation which is lacking in the present affidavit or place where attestation was done. A mere stamping is not part of affidavit. I am referring to the case of **Sadick Hasan V The Republic**, Misc. Criminal Application No. 234 of 2019 pg. 4.

On point No. 4, we are challenging the verification clause does not tell on the information at para 7 and deponent does not say who provided him with such information Again para 12 of the affidavit is not verified.

On ground No. 5 I abandon it.

On point No. 6, there is no name of the chawel. S. 44 para (1) of Advocate's Act that the name of the drawer should be indicated in the pleading. Here it is only cowriter it was drawn by Mwakugire and Co. Advocates who is not advocate in terms of s. 2 and 6 of the Advocates Act. Thus the application is incompetent I refer to the case of **Amina Mhongole V. MSD**, Revision No. 33/2016. I pray for the Preliminary Objection to be sustain and application to be struck out and previous order of blocking the account be uplifted.

Sgd: R. A. Ebrahim

JUDGE

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Advocate Malawa: On 1st point of objection, all the money has already been withdrawn.

Sgd: R. A. Ebrahim

JUDGE

10/06/2020

Advocate Mayage: I supply merit on the point of objection that the money in the respondent account has been frozen by this court. The application is not overtaken by event.

Going to the 2nd point of objection, we concede that there are some paragraphs which are argumentative. However the court can expunge the paragraphs which contains arguments and proceed to determine the remaining paragraphs of the affidavit.

Responding on ground No. 3 that the affidavit offends s. 8 of Notaries Public and Commissioners of Oaths Act, Cap. 12 [R.E. 2002]. The stamp shows the name, address and place residence.

On the 4th point, it is now settled that verification clause cannot dispose the case. The court can allow the party to amend the same.

Or the 6th point, it is our submission that impliedly a firm cannot draw a document but there is a person who drew the document failure to indicate name, cannot make the application defective. It is the error made by an advocate

which cannot be used to punish a party I refer to the case of **Ghania J. Kimambi V Shedrack Ruben Ng'ambi**, Miscellaneous Application No. 692 of 2018. Pray for the application to be dismissed because all points of objection intends to deprive applicant to be heard on appeal.

Sgd: R. A. Ebrahim

JUDGE

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Advocate Bageni: On point No. 1 the garnishee order is already executed hence there is nothing to be lifted.

On point No. 2, the submission of counsel for applicant is concession.

On point 3, I reiterate my submission in chief.

On point No. 4 – It is also a concession and propose an amendments.

On point No. 6 it is also an admission. The case referred has nothing to do with the matter at hand. The question is whether the document falling short is defective or not. I reiterate my prayers.

Sgd: R. A. Ebrahim

JUDGE

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RULING

Counsel for the respondent has raised six points of objection that the application has been overtaken by event, affidavit is incurably defective for containing extraneous matters, arguments and prayers, the affidavit offends **S. 8 of Cap. 12 as well as S. 44 of the Advocates Act**, and verification clause is incurable defective.

Both parties submitted for and against the points of objection. However I shall concentrate on point No. 2 of the objection as it has the effect of disposing of this application.

Indeed, the law i.e. **Order XIX Rule 3(1) of the CPC, Cap. 33**, R.E. 220 has put a requirement that affidavit shall be confined to facts as the deponent is able of his own knowledge to prove. This requirement has been well

expounded in the cited case of **Uganda Vs Commissioner of Prisons, Ex-parte Matove (1966)** EACA 514.

Looking at the affidavit in support of the application before this court, at para 4, 5, 6, 8, 9, 10 and 11 which carries the basis of the application; they contain arguments, opinions and legal arguments. Starting with para 4 the words "...but none of our letters was respondent as guided by the Principal Judge **for the interests of Justice, or as is the practice with other Courts, or at least receiving a call to that effect....**". This is an argument.

In para 5 among others, the applicant stated that" and a nisi garnishee order which is supposed to granted (sic) prior to absolute garnishee order was **intentionally bypassed and overlooked, for reasons unknown to the Applicant**". This is an argument.

In para 8, the applicant averred that ".....the conducts of the **trials after judgment was delivered are so suspicious, taking into account that, and without prejudice to the Applicants overwhelming chances of success in the appeal, the amount awarded in the judgment has** no justifications **whatsoever.....**". It is argument and opinion.

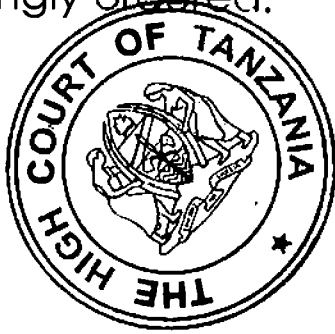
In para 9 “.....**All are meant to perpetrate injustice on the party of the Applicant, and amount to abuse of processes, the conducts which should be discouraged for the interest of justice**”. An opinion.


In para 10 “....the Application subject of this affidavit has merit and for interests of justice, I pray **that it is reasonable to be entertained and determined in favor of the Applicant**”
Prayer.

Counsel for the applicant conceded to the offending paras and prayed for the court to expunge them so that to consider the remaining part of the affidavit. If para 4, 5, 8, 9 and 10 are expunged as I hereby do, the remained para 1, 2, 3, 6 and 12 alone do not establish the basis of the application. I would not go further on the contravention of **Order VI Rule 15 (1) and (2) of Cap. 33** which requires a deponent to specify by reference what he verifies upon information received and believed to be true in respect of para 7, on information received from one Hilda. All in all the affidavit is incurably defective and accordingly, miscellaneous Civil Application No. 580 of 2019 is struck out

with costs. Consequently the interim ex parte orders have no legal effect.

Accordingly ordered.




R. A. Ebrahim

JUDGE

10/06/2020