



IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

MISC.LAND CASE APPLICATION No. 23 of 2017

Arising from Msc.Land Case Application No. 53 of 2016 of the High Court of Tanzania at Bukoba Land Case Appeal no.43/2012 of the High Court of Tanzania at Bukoba, Land case no.64/2011 of District Land and Housing Tribunal at Bukoba and Civil case no.18/2011 of Buganguzi ward Tribunal)

LUDOVICK PASTORY.....APPLICANT

VS

WILLIAM BWABO.....RESPONDENT

RULING

29/1/2020 & 27/3/2020

KAIRO J

This ruling emanates from a preliminary objection raised by the Respondent in this application. Briefly the background of this case is

that the Respondent; William Bwabo successfully sued the Applicant in Buganguzi Ward Tribunal on a claim of *shamba* through case No.18/2010. Aggrieved with that decision, the Applicant successfully appealed to the District Land and Housing Tribunal for Kagera at Bukoba through appeal **No.64/2011**. Being dissatisfied, the Respondent in turn appealed to the High Court of Tanzania (Land Division) through appeal **No.43/2012** which appeal was decided in his favor. The record reveals that, the Applicant claimed to have an ambition to apply to this court for review of its judgment No.43/2012 but due to lapse to time for the reason he endeavors to advance, has now filed an application to seek an extension of time to review the said High court judgment.

In his chamber summons to support his affidavit, the Applicant cited the provision of section 14(1) of the Law of Limitation Act Cap 89 RE 2002 to move this court. The applicant has now encountered a stumbling block with a preliminary objection on the point of law raised by the Respondent which is couched as hereunder:-

(a) That the application is incompetent before this honorable court because of citing wrong enabling provision of the law, hence the court has not been properly moved to hear it.

Both parties are self-representing and opted to argue this objection by way of written submission.

In his written submission to support the raised P.O. the Respondent argued that the applicant has cited section 14(1) of the Limitation act (supra) in his chamber summons for the sought extension of time while the Act does not apply to matters originating from the Ward Tribunal.

He relied on section 52(2) of the Land Disputes Courts Act Cap. 216 R.E. 2002 which allows the use of Law of Limitation in the High Court and District Land and Housing Tribunal when exercising their original jurisdiction. He contended that in the circumstances section 14(1) of the Law of Limitation cited in the Chamber summons did not properly move this court, hence this application is incompetent. The Respondent urged the court to strike out this application as it is the only remedy available for incompetent applications. To bolster his stance he cited the case of *Mic. Tanzania Ltd, versus Minister for Labour and Youth Development and Attorney General, CA, Civil Appeal No. 503 of 2014 at Dar es Salaam* [unreported] at pg 11.

In his written submission, the Respondent added another objection regarding the verification clause in the affidavit of the Applicant to the effect that it did not specify which paragraphs are to his knowledge and which ones are to his belief. He cited *Civil Case no. 548/04/2018:*

Anatol Rwebangira vrs The Principal Secretary Ministry of Defence and National Service & The Hon. Attorney General; CAT BKB (Unreported) wherein the Court observed “ *however the law does not allow a blanket or general verification that the facts contained therein in the affidavit are based on what is true according to knowledge, belief and information without specifying the respective paragraphs*” and again prays the court to struck out the application.

In his riposte, the Applicant argued that the Law of Limitation Act Cap. 89 (R.E. 2002) and Rule 3(4) of MCA (Limitation of Proceedings under customary Law) GN. No. 311 of 1964 and any other enabling provision as he cited them are applicable. He went on that the Respondent failed to clarify why application for review is not compulsive jurisdiction to the High Court as argued by the Respondent. With regards to the anomaly in the verification clause, the Applicant conceded to it but submitted that they were too minor to obstruct the dispensation of justice. He further urged the court not to be tied/ thwarted with technicalities referring the court to Article 107A (2) (e) of the Constitution as a back-up. The Applicant thus prayed the court to reject both of the P.Os raised.

I have deeply considered the submissions from both parties starting with the second PO wherein the Respondent attacked the verification part of the Applicant's affidavit.

It is not in dispute that the Applicant has given a general verification without specifying as to which paragraphs are based on his knowledge and again which are based from his belief. The court has times and again insisted that affidavits must categorically state the source of the information contained therein. In the case of **Salima Vuai Faim vrs Registrar of Cooperatives & 3others; (1995) TLR 75 HC ZNZ**, the court observed: *"where an affidavit is made on information, it should not be acted upon by any court unless the sources of information are specified"*

The court further held in the case of **Augustine Lyatonga Mrema and others vrs AG and others [1996] TLR 273 at page 274** that failure to disclose the source of information renders the affidavit defective.

Fortified by the above cited cases, the Applicant argument that the anomaly in his affidavit are minor thus the court should disregard it; is not correct with much respect. Legally a defective affidavit renders the whole application defective thus incompetent before the law [refer the case of **Mohamed I.A. Abdul Hussein vrs Pita Kempap Ltd [2005] TLR 383 at page 384**]

The Applicant has sought refuge in Article 107A (2) (e) of the Constitution. However in my conviction the pointed out anomaly doesn't fall within the purview of Article 107 (2) (e) of the Constitution.

When discussing the application of the sought Article in the case of **Zuberi Mussa Vs. Shinyanga Town Council, Civil Application No. 100 of 2004 (Unreported) CAT Mwanza** Cited With Approval in The Case Of **Commissioner General (TRA) Vs. Pan African Energy (T) Limited, Civil Application No. 277/20 Of 2017**, the Court held that:

“Article 107A (2) (e) is so couched that in itself is both conclusive and exclusive of any opposite interpretation. A purposive interpretation makes it plain that it should be taken as a guideline for Court action and not as iron clad rule which bars the courts from taking cognizance of salutary rules of procedure which when properly employed help to enhance the quality of justice delivered.... One cannot be said to be acting wrongly or unreasonably when he is executing the dictates of law”.

In the same vein, proper and correct attestation of the affidavit, being the legal requirement, can't be dispensed with in pretext of the application of Article 107A (2) (e) of the Constitution, with due respect to the Applicant.

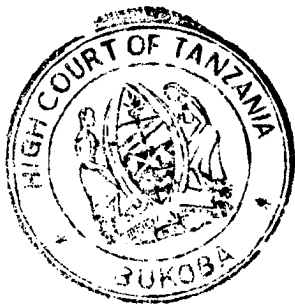
The consequence is to render the affidavit defective as well as the application which was being supported as was held in the case of was held in the case of **Mohamed I.A. Abdul Hussein (supra)**. In the

circumstances I am constrained to struck out the application as I hereby do with cost.

Having struck out the incompetent application, the court has found itself with no proceedings to enable it proceed with the second PO.

Objection sustained.

It is so ordered.




L.G.KAIRO

JUDGE

27/3/2020

Date: 27/03/2020

Coram: Hon. J. M. Minde - DR

Applicant: Present


Respondent: Present

B/Clerk: Lilian Paul

Court:

This matter comes for ruling today and I delivered the said ruling this 27th day of March, 2020 in the presence of both parties. Let them supplied with the copy of the delivered ruling.




Sgd: J. M. Minde - DR
27/03/2020