

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC LAND APPLICATION NO. 15 OF 2021

(Originating from the Judgment and Proceedings of the District Land
and Housing Tribunal of Mbeya at Mbeya Land Application
No.117 of 2019)

BERNARD WILLIAM APPLICANT

VERSUS

NICKOLAUS MYEFU

PILI DAIMON MWAKAILARESPONDENTS

GODLOVE MBWANJI

EDWARD MDOE

RULING

Date of last order: 08.07.2021

Date of Ruling: 10.08.2021

Ebrahim, J.:

The Applicant has initiated the instant application for extension of time under **section 41(2) RE 2019 of the Land Disputes Courts, Cap 216 RE 2019** so that he can lodge his appeal against the decision of the District Land and Housing Tribunal of Mbeya at Mbeya in Land Application No. 117 of 2019. The application is supported by an affidavit deposed by Bernard William, the Applicant.

As the averments in the Applicant's affidavit show, having been dissatisfied by the decision of the trial Tribunal, the Applicant herein made efforts to secure a copy of proceedings, judgement and decree so that he can lodge his appeal. The Applicant through his advocate wrote a letter applying to be supplied with copies of judgement, proceedings and a decree on the date of delivery of judgement i.e., 18.11.2020 and a reminder on 30.12.2020. However, he received all requisite documents on 10.03.2021 and his advocate filed the instant application 31.03.2021.

Upon being served with a copy of the chamber summons, Counsel for the Respondents raised two points of preliminary objection that application is incompetent as the affidavit is tainted with hearsay evidence contrary to the law; and that the application is incompetent in the jurat of attestation hence contrary to the law.

The points of preliminary objection were argued by way of written submission as per the schedule set by the court. The Applicant was represented by advocate Tunsume Angumbwike and the Respondents preferred the services of Joyce Kasembwa.

Submitting in support of the first point of objection, Counsel for the Applicant referred to para 3 and 8 of the Affidavit and argued that the same contravene **Order XIX Rule 3(1) of the Civil Procedure Code, Cap 33 RE 2019** for containing hearsay evidence that it was the Applicant's advocate Tunsume Angumbwike who wrote a letter to the Tribunal on 18.11.2020. He contended also that the Applicant averred in his affidavit the information on when his advocate was supplied with a copy of judgement and prepared the application but there is nowhere the mentioned advocate swore an affidavit to support such contentions. To cement her arguments, she cited the case of **Sabena Technics Dar Limited VS Michael J. Luwunzu**, Civil Application No. 451/18 of 2020 (CAT- Unreported) on the principle that an affidavit which mentions another person is hearsay unless that other person swears as well. She further cited the case of **Standard Goods Corp. Limited Vs. Harackchard Nathar and Co.** [1950] EACA 99 that *"the Court should not act upon the unspecified source of information"*.

Submitting further, she cited the case of **Salima Vuai Foun Vs. Registered Cooperative Societies and Others** [1995] TLR 75 on the

principle that the court should act on the affidavit relied on information where the source of information is specific.

On the second ground of objection, Counsel for the Respondents faulted the jurat of attestation of the Applicant's affidavit for not showing as to whether the Applicant is known or has been identified to the Commissioner for Oaths contrary to the requirements set by the **Oaths and Statutory Declaration Act, Cap 34 RE 2019**. She cited the case of **Amani Girls Home Vs Issack C. Kamela**, Civil Application No. 18 of 2014 (CAT-Mwanza) pg 1-2. She finally prayed for the objection to be sustained and the application be struck out with costs.

Responding on the submission by the Counsel for the Respondent, Counsel for the Applicant firstly argued that the points of objection are not on pure points of law as envisaged under the celebrated case of **Mukisa Biscuits Manufacturing Company Ltd Vs West End Distributors Limited** (1969) 1 EA pg 700 & 701. She argued further that the facts in the affidavit sworn by the Applicant can be proved by the applicant basing on his own knowledge. She distinguished the circumstances of the cited case of **Sabena Technics Dar Limited**

(supra) that in the cited case there was requirement of the affidavit by directors from Belgium explaining what happened in Belgium instead of being deposed by the Applicant who resides in Tanzania. As for the case of **Standard Goods Corporation (Supra)** using her rather uncourteous language, she declares it to be **useless** because there was no need of specification since the Applicant verified the facts to the best of his own knowledge. She urged the court to expunge the alleged paragraphs instead of striking out the whole application as ordered in the case of **Msasani Peninsula Hotels Ltd and 6 Others VS Barclays Bank Tanzania Limited and 2 Others**, Civil Application No. 192 of 2006 (CAT-unreported).

Responding on the second point of objection, she contended that the jurat of attestation is properly dated and identification of the deponent stated by the Commissioner for oaths. She prayed for the points of objection to be dismissed with costs.

In rejoinder, Counsel for the Respondent reiterated what she submitted in chief and insisted that para 3 and 8 remains to be hearsay and there is no need of evidence. She reiterated her prayers.

In determining the points of objection, I prefer to begin with the second point of objection that the jurat of attestation does not show the identification of the deponent by the Commissioner for oaths. Nevertheless, looking at the court's copy the same is conspicuously stated that the deponent was identified to the Commissioner for Oaths by Tunsume on the 12th March 2021. It is the cardinal principle that where there is uncertainty on the document, the document filed in court prevails. Therefore, this point of objection is without merits and it is hereby dismissed.

Coming to the first issue that points of objection are not point of law, with respect, Counsel for the Applicant is trying so hard to mislead the court and herself as indeed the issue that source of information in an affidavit must be disclosed is not a fact but law as per the auspices of **Order XIX Rule 3(1) of the Civil Procedure Code, Cap 33 RE 2019** requiring the affidavit to be confined to such facts as the deponent is able of his own knowledge to prove. More- so it is the general principle of practice and procedure on the requirement to acknowledge and specify source of information (see the case of **Uganda Vs Commissioner for Prisons, ex-Parte Matovu (1966) E.A.**

514 in insisting that affidavit should confine to facts which witness deposes of his own knowledge). I further subscribe to the cited cases of **Standard Goods Corp (supra)** and **Salima Vuai Foun (supra)** on the requirement on the specific source of information.

I have gone through para 3, 4 and 8 of the Applicant's affidavit. In para 3 and 4, the Applicant stated that the letters applying for a copy of proceedings and judgement were made by his advocate on both 18.11.2020 and 30.12.2020. On para 8, the Applicant states the facts as to when his advocate was supplied with the copy of the judgement i.e., 11.03.2021 and when she prepared the application i.e., 12.03.2021 and when she filed them in court i.e., 16.03.2021 due to the fact that she resides in Njombe. Surely, this is not information from the Applicants own knowledge as envisaged by the law but rather the information he was supplied by his advocate. The law is clear that such information must be acknowledged by being specifically stated where the Applicant obtained such facts. Saying otherwise, it means such information is hearsay (see the cited case of **Sabena Technics (supra)** as it mentions another person without

that person swearing an affidavit to own it considering the fact that an affidavit is evidence in lieu of direct oral evidence.

That being the position therefore, I agree with the Counsel for the Respondents that the affidavit in support of the chamber summons contains hearsay evidence censored by **section 62(1) of the Law of Evidence Act, Cap 6 RE 2019** which requires evidence to be direct.

Counsel for the Applicant has urged the court to expunge the offending paras and remain with the application instead of striking out the whole application. However, going through para 3,4 and 8 they are the ones establishing the reasons for the delay and the time when the instant application was filed in court. If expunged from the affidavit, the affidavit shall have no legs to stand on as there would be no information as to when the documents were obtained and whether the Applicant applied to be supplied with copies of judgement and proceedings within the prescribed time to warrant extension of time.

For all purpose and intent, I accordingly struck out the application with costs for being incompetent before the court.

Accordingly ordered.



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim", is written over a circular stamp.

R.A. Ebrahim

Judge

Mbeya

10.08.2021

Date: 10.08.2021

Coram: Hon. R.A. Ebrahim, Judge.

Applicant: Absent.

For the Applicant:

1st Respondent: Present.

2nd Respondent: Present.

3rd Respondent:

4th Respondent: Advocate Feddy Cheyo.

For the 2, 3 and 4 Respondents: Advocate Feddy Cheyo.

B/C: Patrick Nundwe.

Advocate Feddy Cheyo: We are ready for the ruling.

Court: Ruling is delivered in chambers in the presence of the Applicant in person, 2nd respondent and Counsel for the 2nd, 3rd and 4th respondents.



R.A. Ebrahim

JUDGE

10.08.2021