

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY)  
AT MWANZA**

**LAND APPEAL NO. 25 OF 2021**

*(Arising from Misc. Land Application No. 340 of 2019 in District Land and Housing Tribunal for Mwanza at Mwanza and formally in Land Application No 340 Of 2018 of the District Land and Housing Tribunal of Mwanza at Mwanza)*

**ZERA KATETI----- APPELLANT**

**VERSUS**

**BARAKA MALIMA-----1<sup>st</sup> RESPONDENT**  
**NEEMA JULIUS-----2<sup>nd</sup> RESPONDENT**  
**ACCESS BANK (T) LTD-----3<sup>rd</sup> RESPONDENT**

**JUDGMENT**

*Last Order date: 12.07.2022*

*Judgment Date: 26.07.2022*

**M. MNYUKWA, J.**

The sticking question in this appeal is, whether the District Land and Housing Tribunal for Mwanza at Mwanza erred in law and fact for dismissing Application No. 340 of 2019, for the reason that the appellant failed to show good cause for setting aside dismissal order.


Briefly, it goes thus; the Appellant Zera Kateti instituted Application No. 340 of 2018 before the District Land and Housing Tribunal of Mwanza



at Mwanza against the above named three respondents claiming the following reliefs;

- 1. A declaration that the suit house No. 005/051 Mkuyuni Sokoni Mwanza City belongs to the applicant and her sister and brothers being the lawful owner.*
- 2. A permanent injunction restraining the third respondent from trespassing and encroaching onto applicant's family member's suit house.*
- 3. Costs be granted to the applicant.*
- 4. Any other reliefs the Honorable Tribunal will deem fit to grant.*

It is on the appellant's application that, one Samwel Onyango bought a suit house on behalf of the appellant, her brother and sisters on 9<sup>th</sup> August 2017 from the 1<sup>st</sup> and 2<sup>nd</sup> respondents for the value of Tshs. 14,000,000/= . Before payment was done, the respondents informed the appellants, her brother, sisters and one Samwel Onyango that, the house in dispute was mortgaged as a security for loan with BRAC Tanzania and that the remaining debt was Tshs. 6,000, 000/= . That, the said amount of money was paid to BRAC Tanzania and the suit house was released from mortgage. Since the agreed price for purchasing the suit house was Tshs. 14,000,000/= the appellant, her relatives and one Samwel Onyango paid Tshs. 8,000,000/=, as the balance of the purchasing price after



paying off BRAC Tanzania. That, when they occupied the suit house, the 3<sup>rd</sup> respondent's agents and the court brokers trespassed claiming that the 1<sup>st</sup> and 2<sup>nd</sup> respondents mortgaged the suit house to him as a security for loan. That, the appellant was not aware if the suit house has been mortgaged to the 3<sup>rd</sup> respondent. She, therefore, filed an Application to the District Land and Housing Tribunal for Mwanza and prayed the above-mentioned reliefs.

As per records, the matter proceeded *ex parte* against the 1<sup>st</sup> and 2<sup>nd</sup> respondents as per Tribunal Order dated 15<sup>th</sup> April, 2019. After some adjournment, the case was scheduled for hearing on 12<sup>th</sup> November 2019 whereby, only the 3<sup>rd</sup> respondent was present. Since the appellant was absent, the Chairman of the District Land and Housing Tribunal dismissed the Application with no order as to costs in terms of Regulation 11(1)(b) of GN, No. 174 of 2003 for non-appearance of the appellant who was the applicant.

Aggrieved, the appellant filed Application No 240 of 2019 before the District and Land Housing Tribunal for Mwanza and prayed for setting aside the dismissal order. After hearing of the Application, the District Land and Housing Tribunal dismissed the Application for the reason that the appellant failed to show good cause as to why the dismissal order was to be set aside.



Aggrieved further, the appellant lodged the present appeal and confronted the decision of the District Land and Housing Tribunal on two grounds:

- 1. That, the trial Tribunal erred both in law and fact by failing to consider and analyze properly the evidence adduced before it.*
- 2. That, the trial Tribunal erred in law by condemning the appellant on the wrongs committed by the officer of the Tribunal.*

At the hearing of this Appeal, the appellant appeared in person, unrepresented and the 3<sup>rd</sup> respondent afforded the services of Ms. Happiness Mangwi, learned counsel and the matter proceed exparte against the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The appeal was argued orally.

In her oral submission, the appellant prays to adopt her petition of appeal to form part of her submission. She submitted that, the case was scheduled for hearing on 13<sup>th</sup> and she was informed by the officer of the District Land and Housing Tribunal that the case was dismissed on 12<sup>th</sup> that's why she lodged the appeal.

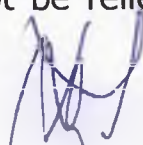
In rebuttal, the counsel for the 3<sup>rd</sup> respondent submitted that, she opposes the grounds of appeal. She submitted that, when Application No. 340 of 2019 was scheduled for hearing, the advocate of the appellant prayed the affidavit of the appellant to form part of his submission. She



went on that, looking at the applicant's affidavit which formed part of her counsel's submission, was full of contradictions.

She went on to refer to paragraph 4 of the said affidavit whereby the applicant deponed that on 12<sup>th</sup> September 2019 when Application No 340 of 2018 was scheduled for hearing, the trial chairman was absent and the matter was scheduled for hearing on 13<sup>th</sup> September 2019. She added that in paragraph 5 of the same affidavit the applicant deponed that on 13<sup>th</sup> September 2019 the appellant was before the District Land and Housing Tribunal and she was informed that the case was scheduled for hearing on 12<sup>th</sup> November 2019 and therefore it was dismissed for want of prosecution as she was absent.

The counsel for the 3<sup>rd</sup> respondent went on that, on paragraph 6 of the same affidavit the appellant stated that, her failure to appear on 12<sup>th</sup> November 2019 was caused by the clerk of the District Land and Housing Tribunal who informed her that, the case was scheduled for hearing on 13<sup>th</sup> November 2019. She went on to remark that, the affidavit of the applicant was full of contradictions when looking closely at paragraphs 5 and 6 of the affidavit. She refers to the case of **B. P's (Cote-D'Ivoire SA Ltd v Ghuba Holding (T) Limited**, Commercial Case No. 70 of 2004, HCT Commercial Division at Dar es Salaam, that the affidavit tainted with untruths is not affidavit at all and cannot be relied upon to support an



application. She winds up on this ground by stating that since there were contradictions on the appellant's affidavit, it was correct for the District Land and Housing Tribunal to reach the said decision.

On the second ground, it was her submission that, the appellant failed to file the affidavit sworn by the clerk of the District Land and Housing Tribunal to show that she receives wrong information from him. She went on that, when going to page 5 of the Judgement delivered by the District Land and Housing Tribunal, the Chairman referred to the case of **Mondorosi Village Council v Tanzania Breweries Limited LTD**, Misc. Land Application No. 150 of 2013 where it was held that, the affidavit cannot be acted upon unless the source of information is specified and failure to specify the source of information renders the affidavit to be defective and incompetent. She retires by stating that since on the day when the matter was scheduled for hearing both parties were present and on the hearing date the appellant was absent, the appeal should be dismissed with costs and the decision of the District Land and Housing Tribunal should be upheld. In rejoining, the appellant reiterated what she had submitted in chief.



I have examined the record of appeal and considered the oral submission of the parties from both sides. As I indicated at the outset, the sticking issue in this appeal is whether the appellant failed to show good cause for the District Land and Housing Tribunal to set aside the dismissal order. I say so because Application No. 340 of 2018 was dismissed for nonappearance of the appellant, so the evidence complained of by the appellant to be not considered by the District Land and Housing Tribunal is the evidence stated in the affidavit on Misc. Land Application No. 340 of 2019 which is the subject of this appeal.

To begin with, I find it is necessary to reproduce the reason deponed by the appellant in convincing the District Land and Housing Tribunal to set aside the dismissal order. The appellant's reasons are evidenced in paragraphs 3, 4, 5 6, 7 and 8 of her affidavit. Let the applicant speak for herself as gleaned from her affidavit which I hereby reproduced:

- 3. That, the Main Application was fixed for hearing on 12-09-2019.*
- 4. That, on 12-09-2019, I attended the hearing of the said Land Case but found the assigned Chairman was absent but the Tribunal Clerk adjourned my Land Case to 13-09-2019 for hearing.*
- 5. That, on 13-09-2019 I, the applicant attended the hearing of my aforesaid Land Case only to be told that*



*my case was fixed for hearing on 12-11-2019 and was thus dismissed for my non appearance*

- 6. That my failure to attend the hearing of my case on 12-11-2019 was the Tribunal Clerk, who read to me that, my case was fixed for hearing on 13-11-2019*
- 7. That, had the Tribunal clerk read to me the date of my case as being 12-11-2019 I could have attended,*
- 8. That, the reason for my failure to attend the hearing of my case on 12-11-2019 was caused by the Tribunal clerk who read to me 13-11-2019 as the date of hearing of my Land Case instead of reading to me from the Tribunal case file 12-11-2019 as the date of hearing my case.*

Before going to the discussion as submitted for and against by the parties, I find it wanting to revisit the proceedings of the District Land and Housing Tribunal in Application No. 340 of 2018 to know what transpired and to determine as to whether what is deponed by the appellant is true as reproduced above.

As it is reflected on page 9 of the Proceedings of the Application No 340 of 2018, the parties, the appellant and 3<sup>rd</sup> respondent respectively appeared before the District Land and Housing Tribunal and the matter was adjourned and scheduled for hearing on 12/11/2019. On the said day, that is 12/11/2019, the assessors and 3<sup>rd</sup> respondent were present, and the appellant was absent. The Chairman gave an Order in terms of





Regulation 11(1)(b) of GN No. 174 of 2003 to dismiss Application No. 340 of 2018 for non-appearance of the appellant.

In the instant appeal, the appellant complained that the District Land and Housing Tribunal did not take into consideration and analyze the evidence adduced before it. The appellant's evidence is as shown in his affidavit as reproduced above.

Upon going through the said affidavit, I totally agree with the learned counsel of the 3<sup>rd</sup> respondent that, the affidavit of the appellant is full of contradiction. As it is settled that affidavit is a sworn written statement from a witness in a dispute which set out the evidence that the deponent wants the court to believe. In the circumstance, the witness needs to swear nothing but the truth. The affidavit is supposed to have a verification clause which enables the court to find out which facts can be proved as well as states the source of information of facts, as to which facts are true to the best knowledge of the deponent, which facts are based on the information and which facts are based on belief.

In the case at hand, the appellant's affidavit is disputed for being improperly verified by the deponent. As it was stated in **Director of Public Prosecution v. Dodoli Kapufl and Patson Tusalile**, Criminal



Application No. 11 of 2008 (unreported) the verification clause is simply defined as that part of an affidavit which: -

*"shows the facts the deponent asserts to be true of his own knowledge and those based on information or beliefs".*

As reflected in the records as I have earlier on stated, it is evident that the appellant was present on the last adjournment when the case was scheduled for the next hearing date. This is reflected from the court records and as it is the trite position of the law that the court's records are trustworthy and are supposed to be believed, it is my firm view that what has been deponed by the appellant on paragraphs 3, 4 and 5 of the affidavit is nothing but the untruth statements. I say so because the records bear testimony that on 01/07/2019 the case was coming for hearing but it was adjourned because only one assessor was present, the Chairman adjourned the hearing up to 02/09/2019. On 02/09/2019 the appellant and the 3<sup>rd</sup> respondent appeared but the matter was adjourned up to 12/11/2019 and on that date, is when the Application was dismissed because the appellant did not appear and she was present on the last adjournment.

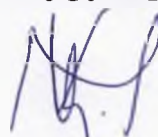


As it was rightly stated by the counsel of the 3<sup>rd</sup> respondent when referring to the persuasive decision of this Court in the case of **B. P's (Cote-D'Ivoire SA Ltd v Ghuba Holding (T) Limited**, (supra) that

*"An affidavit which is tainted with untruth is no affidavit at all and cannot be relied upon to support an application, False evidence cannot be acted upon to resolve any issue."*

From the records, what is deponed by the appellant contradicts with records at hand, and therefore I don't see the reason to rely on the appellant's affidavit as it is short of truth and therefore cannot be relied on to establish the truth. For that reason, I find the first ground to lack merit.

On the second ground, the appellant deponed and submitted in her oral submission that she was misled by the court clerk of the District Land and Housing Tribunal that the hearing was scheduled on 13/11/2019 and not on 12/11/2019. I think this issue should not detain me much, as it was rightly decided by the Chairman of the District Land and Housing Tribunal that when the affidavit relies on information, the source of information has to be disclosed. The Court in **Jamal S. Mkumba & Another Abdallah Issa Namangu Attorney General** Civil Application No. 240/01 of 2019 referring to the case of **Director of Public Prosecution v. Dodoli Kapufi and Patson Tusalile** (Supra).



A similar stand was also given in **Paul Makaranga v. Republic**, Criminal Application No. 3 of 2010. As to the rationale of verifying an affidavit, the Court in **Lisa E. Peter v. Al- Hushoom Investment**, Civil Application No. 147 of 2016 quoted with approval the Indian case of **A.K.K. Nambiar v. Union of India (1970) 35 CR 121** which explained the importance of a verification clause in affidavit as follows:

*"The reason for verification of affidavits is to enable the court to find out which facts can be said to be proved on the affidavit evidence or rival parties' allegations may be true to information received from persons or allegation may be based on records. The importance of verification is to test the genuineness and authenticity of allegation and also to make the deponent responsible for allegations. In essence, verification is required to enable the court to find out as to whether it will be safe to act on such affidavit evidence. In the absence of proper verification clause, affidavits cannot be admitted as evidence".*

Based on the above-cited cases, the verification clause is one of the essential ingredients of any valid affidavit which must show the facts the deponent asserts to be true of his own knowledge and those based on information or beliefs. On further instance on the importance of a verification clause, the Court of Appeal in **Anatol Peter Rwebangira**  
**The Principal Secretary, Ministry of Defence and National**



**Service and the Hon. Attorney General**, Civil Application No. 548/04 of 2018 (supra) quoted the book in *Civil Procedure by C.K. Takwani 8<sup>th</sup> Edition* where it was stated at page 21:-

*"Where an averment is not based on personal knowledge, the source of information should be clearly disclosed."*

The appellant's affidavit contains both the information which is to the best of her knowledge and that which was the information of the third party as observed for under para 5 and 6 of the affidavit. The appellant was duty bound to disclose the source of information in the affidavit at issue specifically, paragraphs 5 and 6 of the affidavit cannot be based on the deponent's own knowledge as she stated in the verification clause. Failure of the appellant to disclose the source of information renders the affidavit to be defective and incompetent and in fine, the incompetent affidavit cannot be relied on unless it is amended.

Again, as it was held by the Chairman of the District Land and Housing Tribunal that for the District Land and Housing Tribunal to set aside the dismissal order, the applicant has to show good cause why it has to do so. Since in the present appeal the appellant failed to show good cause as to why the dismissal order is to be set aside, I find the appeal is not merited and must fail.



In the upshot, the appeal is without merit and it stands dismissed with no order as to costs.

It is so ordered.



A handwritten signature in blue ink, appearing to be "M. Mnyukwa".

**M.MNYUKWA**

**JUDGE**

**26/07/2022**

**Court:** Judgment delivered on 26<sup>th</sup> July 2022 in the presence of the appellant and the 3<sup>rd</sup> respondent's counsel.

A handwritten signature in blue ink, appearing to be "M. Mnyukwa".

**M.MNYUKWA**

**JUDGE**

**26/7/2022**