

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISCELLANEOUS CIVIL APPLICATION NO. 22 OF 2020

Between

ALLIANCE FINANCE CORPORATION LIMITED1ST APPLICANT

TATA AFRICA HOLDINGS TANZANIA LIMITED2ND APPLICANT

STEAM GENERATION & RECOVERIES LIMITED3RD APPLICANT

VERSUS

SAFARI DENIS SAMSONRESPONDENT

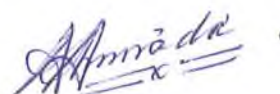
RULING

A.A. MBAGWA, J.

This is a ruling in respect of preliminary objections raised by the respondent. The applicants herein filed this application seeking for extension of time within which to file an appeal. Upon service of the application documents to the other party, the respondent's counsel raised two preliminary points of objection as follows;

1. That this Court has no jurisdiction to entertain the instant application as it is not properly moved.
2. That, the affidavit in support of the applicant's application is incurably defective as it contains hearsay information.

When the matter came before the Court (Hon. Mambi J), the parties prayed and were allowed to dispose of the preliminary objections by way



of written submissions. Both parties complied with the Court filing schedule. The applicants had the services of Halima Semanda whereas the respondent was represented by Mr. Peter Kilanga, both learned advocates.

Submitting in support of the first preliminary objection, Mr. Peter Kilanga argued that the Court has been improperly moved as the applicants cited section 21(1) of the Law of Limitation Act which is not the appropriate enabling provision. Kilanga said that section 21(1) concerns with extension of time in respect of suits and not applications like the present one. He added that suits and applications are distinct in law and use different provisions for extension of time. Mr. Kilanga further argued that the applicants were supposed to cite section 21(2) and not 21(1). To support his argument, he cited cases of **Leila Megid as le Housing Enterprises Vs International Commercial Bank of Tanzania Ltd** 2016 TLS 33 and **Edward Bachwa & 3 Others vs the Attorney General**, Civil Application No. 128 of 2006, where the Court of Appeal held that failure to cite a proper provision of law is fatal ailment which renders the application incompetent hence liable to be struck out.

On the second point of objection, the respondent's counsel submitted that paragraph 6 of the applicant's affidavit contains hearsay in that it is not in the deponent's knowledge rather of Nicholas Kikove. The counsel referred to the case of **Jackline Ntuyabaliwa Mengi & 2 Others Vs Benson Benjamin Mengi & 5 Others**, Msc. Civil Application No. 486 of 2019 in which it was held that affidavit which mentions a person is hearsay unless such person swears an affidavit as well. Mr. Kilanga prayed the Court to expunge paragraph 6 of the applicant's affidavit and consequently strike out the application with costs.



In reply Ms Halima Semanda, counsel for the applicants dismissed both objections. She submitted that the applicants cited, in the chamber summons, sections 14(1)(2), 21(1) and item I of part II of the Schedule to the Law of Limitation Act along with order XLIII rule 2 of the Civil Procedure Code. Semanda added that section 21(1) of the Law of Limitation Act provides for exclusion of time for proceedings bonafide instituted in court without jurisdiction. The applicants' counsel cited the case of **Burafex Limited (Formerly Known As Amataa Limited) vs Registrar of Titles**, High Court of Tanzania at Dar Es Salaam (Unreported) and said that it defined the term suit to include application.

Further, Ms. Halima Semanda submitted that even if some provisions are inapplicable but the correct provision i.e. section 14(1)(2) of the Law of Limitation Act was cited. She was opined that where inapplicable provisions are cited along with the applicable provisions, the appropriate course to take is to ignore the irrelevant ones. She relied on case of **Alliance One Tobacco Tanzania Limited and Another vs Mwajuma Hamisi(as admininitratix of the late Philemoni R. Kilenyi and another**, Miscellaneous Civil Application No. 803 of 2018 to support her contention.

Regarding the second objection, Ms Halima Semanda argued that the objection was baseless in that the deponent verified paragraph 6 to be information received from Nicholas Kikove as per requirement of order XIX rule 3(1) of the Civil Procedure Code [Cap. 33 R.E. 2019]. On that basis, the applicants' counsel prayed the Court to overrule both preliminary objections with costs.

I have given due consideration to the rival submissions for and against preliminary objections along with the application documents. To begin



with first preliminary objection, it is common cause that the applicants cited, in the chamber summons, sections 14(1)(2), 21(1) the Law of Limitation Act, item 1 of part II of the Schedule to the Law of Limitation Act and order XLIII of the Civil Procedure Code. It should be noted that the enabling provision for extension of time for instituting either an appeal or application is section 14 of the Law of Limitation Act. The other provisions cited by the applicants are merely prescriptive. It is a settled position of law that where a party cites relevant and irrelevant provisions, the Court should ignore the irrelevant and consider the relevant ones. See the case **Duda Dungali vs the Republic**, Criminal Application No. 5 of 2014, CAT at Mbeya. Thus, since section 14 of the Law of Limitation Act was cited, it goes without say that the Court is properly moved. As such, the first preliminary objection is unfounded.

Regarding the second objection, it was Mr. Kilanga's submission that paragraph 6 is hearsay as it contains information which come from Nicholas Kikove. In contrast, Ms Halima Semanda argued that the law allows information obtained from other person than the deponent to be included in the affidavit provided that the source of that information is disclosed. She submitted that under the verification clause, the deponent indicated that the information under paragraph 6 was sourced from Nicholas Kikove.

The law on affidavit is settled that an affidavit for use in court, being a substitute for oral evidence, should only contain statements of facts and circumstances to which the witness deposes either of his own personal knowledge or information obtained from another source which he believes to be true. See the case of **Uganda Vs commissioner of Prisons Ex Parte Matovu** [1966] EA 514. Thus, it is not true as put by the respondent's counsel that the affidavit should be confined to the

information of deponent's personal knowledge. What is important is that a verification clause should indicate information which is in the deponent's personal knowledge and that from another source.

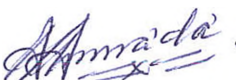
In this application, the deponent has verified to the effect that information under paragraph 6 came from Nicholas Kikove which he believes to be true. Thus, there is no quarrel with this paragraph in law.

Further, it is worthwhile to note that it is not always necessary that whenever information in an affidavit is obtained from another person, that person should also depone to that effect.

In the upshot, it is my findings that both preliminary objections are devoid of merits. I consequently overrule them. Costs to follow the event.

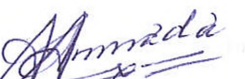
It is so ordered.

Right of appeal fully explained.


A.A. Mbagwa
Judge
04/01/2022

Ruling delivered in the presence of the Peter Kilanga, counsel for the respondent who was also holding brief of Lukaiya, counsel for the applicants this 4th of January, 2022.




A.A. Mbagwa
Judge
04/01/2022