

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

HC. CIVIL APPEAL NO. 49 OF 2021.

(Originating from the District Court of Ilemela in Misc. Civil Application No. 10 of 2021)

UKUSHIRA (GERVAS MSIMBU)APPELLANT

VERSUS

FORTIDAS KAMALA.....1ST RESPONDENT

TASIANA KAMALA.....2ND RESPONDENT

JUDGMENT

21/04/2022 & 5/8/2022.

ROBERT, J:-

This appeal emanates from the ruling of the District Court of Ilemela in Miscellaneous Civil Application No. 10 of 2021 in which the appellant herein applied for extension of time to file an appeal against the decision of the Primary Court of Ilemela in Civil Case No. 96/2017. The respondents herein successfully raised two points of preliminary objection against the said application the gist of which was to the effect that the application was bad in law having been supported by an affidavit containing a fatal verification clause. The District Court proceeded to strike out the

application with costs. Aggrieved, the appellant preferred this appeal on the following grounds:-

- i) That the court grossly erred in law by holding that the affidavit in support of the application was incurable (sic) defective.*
- ii) That the court grossly erred in law by determining the application on technicality without taking into account substantive justice.*
- iii) That the court grossly erred in fact and in law by determines (sic) the matter without taking into account weight of the submission of the appellant.*

At the hearing of this appeal parties enjoyed the legal services of Messrs Joseph Kinango and Silas John, learned counsel for the appellant and respondents respectively.

Submitting in support of the appeal, Mr Kinango opted to combine and argue the first and second grounds of appeal together while dropping the third ground. He argued that, the only reason the appellant's application was struck out by the District Court was because the affidavit in support of the application contained a defective verification clause as the appellant failed to specify which facts on the affidavit were based on his own knowledge and which ones were based on his belief.

He maintained that, in the affidavit in question, there were no averments that there was some information that were received from somewhere else as all information contained in it was from the applicant's

own knowledge. Hence, failure to make the said specification was not fatal nor does it occasion any failure of justice because it goes not to the genuineness of the information contained therein.

He reminded this court of the overriding objective principle which requires courts to determine cases on merits without being tied to legal technicalities and stated that even if the court finds the affidavit to be defective, it can simply order for amendment. To buttress his contention, he referred this court to the decision in the case of **Mussa Manyanka vs AG and Another**, Misc. Civil Application No. 15 of 2019 where the court ordered for amendment of the affidavit.

It therefore was his humble prayer that the court should allow this appeal and set aside the decision of the trial court so that the matter can be heard on merit.

Mr. Silas John, learned counsel for the respondents, submitted in rebuttal that when the deponent verifies the affidavit without specifying the source of information to be either from his own knowledge or from his belief, the affidavit becomes incurably defective. To cement that position he referred this court to the case of **Anatol Peter Rwebangira vs The Principal Secretary, Ministry of Defence and National**

Service & Another, Civil Application No. 548/04 of 2018 where the Court of Appeal at page 10 said;

'it is thus settled law that if the facts contained in the affidavit are based on knowledge, then it can be safely verified as such'

The respondent's counsel went on with his submissions that it is not disputed that the appellant's affidavit at the trial court had a blanket verification which is a fatal irregularity.

With regards to whether the said affidavit could be cured by the overriding objective principle, he maintained that, improper verification of an affidavit is not a mere technicality rather a mandatory requirement and therefore it cannot be cured by the overriding objective principle as parties are required under section 3B of the Civil Procedure Code to assist the court by following the mandatory requirements of the law.

He argued that, the case of **Musa Manyaka** (supra) cited by the appellant is distinguishable from this case as the issue in that case was related to the paragraphs of the affidavit which were wrongly verified. He made reference to page 8 of the cited case where the Court made it clear that it is fatal for the deponent to verify all the facts to be true on his own knowledge.

In conclusion he stated that since the affidavit was incurably defective it could not support the application thus it was rightly struck out by the trial court. It was his prayer that the application be dismissed with costs for want of merit.

Mr. Kinango, learned counsel for the appellant, did not have any rejoinder and left it to this court to decide.

Having gone through the submissions and records in support of this appeal as well as authorities furnished by the parties, I will now make a determination on whether there is merit in this appeal.

It is clear that what is contested by the parties in this matter is whether the appellant's verification clause at the District Court was fatal or not. I find it convenient to reproduce the said verification clause for ease of reference. It provides as follows:

"VERIFICATION

I, GERVAS MSIMBU I verify that is stated in paragraphs 1,2,3,4,5,6,7,8,9,10,11,12,13 and 14 inclusively are true to the best of my knowledge and belief."

The law requires that there be a specification of the information averred in the affidavit based on what is in the knowledge of the deponent, what is received from other sources and what is based on the

deponent's belief. In the case of **Anatol Peter Rwebangira** (supra) the Court of Appeal stated that;

'the law does not allow a blanket or rather a general verification that the facts contained in the entire affidavit are based on what is true according to the knowledge, belief and information without specifying the respective paragraphs'

The concern raised by the learned counsel for the respondent is that that in the quoted verification clause above, the appellant made a blanket verification of information without specifying which information is based on his knowledge and which one is based on his belief which is contrary to the requirement of law.

This Court is in agreement with the respondent that, reading from the quoted verification clause above, it is impossible to know which of the facts contained in the affidavit were based on the deponent's own knowledge and which ones were based on his belief. Hence, the said verification clause is indeed blanket and therefore defective or failure to specify the source of information contained in the affidavit. That said, the District Court was right to strike out the application as the affidavit in support of it was bad in law for containing a defective verification clause.

As a consequence, I find no merit in this appeal and I proceed to dismiss it with costs.

It is so ordered.




K.N. ROBERT
JUDGE
5/8/2022