

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO

LAND CASE NO. 13 OF 2022

MEDARD MUKULASI BYAKUGILA.....PLAINTIFF

VERSUS

THE ATTORNEY GENERAL1ST DEFENDANT

MOROGORO WATER SUPPLY AUTHORITY

(MORUWASA.....2ND DEFENDANT

RULING

Hearing date on: 02/08/2022

Judgment date on: 05/08/2022

NGWEMBE, J.

This ruling is a result of preliminary objection raised by the defendants opposing the competence of the amended plaint filed by the plaintiff. The nature of the objection is to wit; *that the plaint is bad in law for being in contravention with Order VI Rule 14 of Civil Procedure Code (CPC).*

In a nutshell, the plaintiff is claiming against the defendants for a declaratory order that the plaintiff is lawful owner of land plot No. 76 & 78 situated at Mafiga area within Morogoro Municipality; and Permanent



injunction restraining the defendants or its agents from interfering with the ownership of the two plots. The plaintiff having a cause of action against the defendants, he sought assistance from Faraja Msuya from Client Shield Advocates, prepared a plaint and successfully filed in this court on 26th May, 2022. Sometimes on 27th June, 2022 under assistance of advocate Mariam Timothy Kapama from Vindex Law chambers, prepared and successfully filed an amended plaint. Such amended plaint attracted the defendants through the learned State Attorney Hemed Said Mkomwa to raise this objection based on Order VI Rules 14 & 15 of CPC. For clarity the rules are is quoted hereunder:-

Rule 14 *"Every pleading shall be signed by the party and his advocate (if any); provided that, where a party pleading is by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf"*

Rule 15 *"Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case"*

Each party argued vehemently based on interpretation of these rules. Mr. Exervera Ndalaha – senior State Attorney appeared in court and strongly argued that the amended plaint filed by the plaintiff is incompetent by offending the above quoted Rules. To him the proper pleading must bear two signatures of the plaintiff and his advocate (if


any). However, the amended complaint contradicts such requirement of rules.

Insisted that Maria Timothy Kapama is not an advocate in this suit, thus her drawing and verification was illegal. He referred this court to the land case **No. 48 of 2019 between Hamza Omari Pandamilango & 48 others Vs. Namera Group of Industries (T) Ltd.** Prayed that the conclusion arrived on the above case may have the same conclusion in the case at hand.

On the second ground of his argument, he wondered on the way the complaint was drafted, that after verification the complaint comprised what is titled as **certificate of agent**, contrary to proper pleadings as per Order VII Rule 1 of CPC. The contents of the "certificate of agent" indicates the plaintiff is sick without attaching any document verifying on same.

Rested by inviting this court to struck out the amended complaint for offending the law.

In reply, the learned advocate Ignas Punge resisted the objection by insisting that, once the complaint is signed by an advocate is quite enough as per rule 14. Referred this court to the case of **Transgen Trust Vs. Tanzania Zoi City Corporation [1968] HCD 501** where the court held that signing of complaint is a matter of procedure which does not affect the jurisdiction of the court. Insisted that the case of **Hamza Omari** (Supra) is distinguishable. Proceeded to refer this court in the case of **Nyusta Peter Kabezi T/A Nyudiah Enterprise Vs. Herodius Sulus Mborowe & 3 others.** Went further to justify the amended complaint by referring this court to Article 107A of the Constitution



and on the overriding objective principle. Rested by inviting this court to overrule the objection.

I may begin my consideration by citing some basic applicable principles of law. First, once a pleading for court use is amended, the previous pleading becomes obsolete and useless. What is before the court for court use is only the amended one. Therefore, one cannot refer the contents of the previous pleading, rather should refer to the present amendment. This position is supported by several precedents including the case of **Tanzania Hard Ware and Auto parts Ltd and others Vs. CRDB Bank Ltd, Civil Application No. 144 of 2005**, whereby the Court held that, once there is an amendment, then the previous one before the amendment should be treated as if it never existed at all. It is a settled rule of procedure that once pleading is amended the pleading before amendment is no longer material before the court.

In respect to this suit, the only relevant pleading for the plaintiff is the amended plaint. The learned senior State Attorney has questioned the validity of the amended plaint in respect to the verification clause and thereafter the essence and logic of including "*certificate of agent*". Notably, pleadings of civil in nature are guided by the Civil Procedure Code. Since this suit though is a land matter, but rightly is brought in this court by way of a plaint, obvious same must comply with the general procedural rules as provided for by the Civil Procedure Code.

Rightly so, Order VI Rule 1 provide the minimum requirements of a plaint for court use. In those requirements, some of them are mandatory, while others when forgotten may not negate the validity of

the plaintiff, such as failure to itemize paragraphs of a plaintiff serially. Such mistake may be pardoned, but failure to cite properly the defendant and or improper verification of the plaintiff has negative impact on the validity of the pleading. According to the case of **Basil Mramba Vs. Leons Ngalai & Attorney General [1986] TLR. 182** the late Chief Justice Nyalali provided general guidance on pleadings that only material facts constituting a party's case should be pleaded not evidence in support thereof. Further, it is clear that parties are prohibited to plead extraneous matters or embarrassing material facts. Moreover, parties are bound by their pleadings. Therefore, whoever pleads contrary to law is risking his case.

According to rule 1 of Order V1, pleading means a plaintiff or written statement of defence. Likewise, rule 14 provide a legal requirement that every pleading for court use shall be signed by the party and his advocate if any. Finally, rule 15 is more specific that every pleading shall be verified at the end of the document. The term verification is defined by **Black's Law Dictionary 8th** Edition to mean a formal declaration made in the presence of an authorized officer, such as a notary public. Traditionally, a verification is used as a conclusion for all pleadings that are required to be sworn. Verification is a proof to be true, authenticity of a document or it is a confirmation that the contents of the statement are only truth.

To the best, the plaintiff must be verified by the maker who is conversant with the claim. In this plaintiff is the plaintiff who is conversant that the defendants interfered with his landed property. In the case of **Kiganga and Associate Gold Mining Co. Ltd Vs. Universal Gold [2002] T.L.R. 129** the court held that, the requirement of verification



is primarily aimed at countering possible abuse of the court process and fixing responsibility to the party who pleads. Proceeded to hold that *even if the court were to hold that the verification was defective, it would not have resulted into throwing out the whole pleading save that it would have attracted an order for amendment.*

In the circumstances of this suit, undoubtedly, I subscribe to the arguments of learned senior State Attorney that the plaintiff is mandatorily required to verify and sign his pleading along line with his advocate as required by the above cited provisions of law.

Equally important is the alleged "certificate of agent" appearing after verification. Unfortunate that procedure is not known neither by this court nor by the Civil Procedure Code. I need not to labour much on this issue, rather the question is on the available remedies. Being guided by the above precedent, the available remedy is not to strike out the whole pleadings rather is to allow the plaintiff to bring a proper plaint for court use. Does that mean striking out the present amended plaint will attract an order for another ammendment? The answer is yes.

I am persuaded by **SRI. G.C. MOGHA, The Law of Pleadings in India, 14th Edition, Eastern Law House**, at page 58 and 59 where it is observed: -

"Want of signature or verification or any defect in either will not make the pleading void and a suit cannot be dismissed no can a defence be struck out simply for want of, or a defect in the signature or verification of the plaint or written statement, as these are matters of procedures only. It has been treated to be a mere irregularity and curable by amendment. The defect may



be cured by amendment, at any stage of the suit, and when it is cured by amendment, the plaint must be taken to have been presented on the date on which it was amended. If the defect is discovered in appeal, the appellate court may, if thinks fit, have the defect removed, but where the defect is such that it does not affect the merit of the case, no notice of it need be taken."

This position was also maintained in **F. A. Supper v. Singola [1991] 3SCC 375** where the court underscored that: -

"The object of requiring verification is clearly to fix the responsibility for the averment and allegations in the petition on the person signing the verification and at the same time discouraging wild and irresponsible allegation unsupported by facts"

Having so said, the objection is upheld, the present amended plaint is defective for lack of signature of the plaintiff and for comprising unknown pleadings named "certificate of agent". At the end, the amended plaint should be re-amended alongside with this ruling. For ends of justice the defendants are awarded costs of this ruling and the amended plaint shall be filed in this court on 10th of August, 2022.

Order accordingly.

Dated at Morogoro this 5th day of August, 2022.


P. J. NGWEMBE

JUDGE

05/08/2022

Court: Ruling delivered at Morogoro in Chambers on this 5th day of August, 2022 in the presence of the learned State Attorney Hemed Said Mkonwa but in the absence of the plaintiff.



A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal line and a small flourish.

P. J. NGWEMBE

JUDGE

05/08/2022