

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPLICATION No. 39 OF 2022

*(Arising from the High Court [Musoma District Registry] in
Land Case No. 1 of 2019)*

NORTH MARA GOLD MINE LTD APPLICANT

Versus

SINDA NYAMBOGE NTORA RESPONDENT

RULING

24.10.2022 & 24.10.2022

Mtulya, J.:

On 27th day of February 2002, the full court of the Court of Appeal manned by Makame JA. (as he then was), Ramadhani JA. (as he then was) and Lugakingira JA, (as he then was) in **Civil Application No. 21 of 2001** between **Ignazio Messina** and **Willow Investment SPRL** resolved, at page 4 of the Ruling that: *an affidavit which is tainted with untruths is no affidavit at all and cannot be relied upon to support an application.*

To the opinion of the Court recorded at the same page 4 of the decision is to the effect that:

False evidence cannot be acted upon to resolve any issue. The falsehood goes to the root of the application because the applicant has already dishonestly frustrated [the move].

Finally, the court stated that: *we uphold the objection for those reasons.* However, the court was silent on exact order as to whether the application was, struck out or expunged the offending paragraphs after the upholding the objection.

This court had borrowed the move on 3rd July 2020, in the precedent of **Robert S. Lova & Another v. Ministry of Natural Resources and Tourism & Another** in **Revision No. 742 of 2018**, after observing that the affidavit in support of the application for the revision was defective for reason of lies and untrue statements. This court finally held that: *I find the preliminary objection to have merits and hereby strike out the application for incompetence.*

Today this court was again invited in the present application to determine whether an affidavit which contains lies can stand in this court and whether it can be dismissed as lies is a senior wrong in all wrongs contained in any affidavit. In the present application, the applicant's learned counsel, **Mr. Waziri Mchome** stated in his 15th and 16th paragraphs of the affidavit that the Order of the Court in **Civil Appeal No. 457 of 2020** displayed that the appeal was scheduled for hearing on 29th October 2022 whereas the event actually occurred on 9th May 2022.

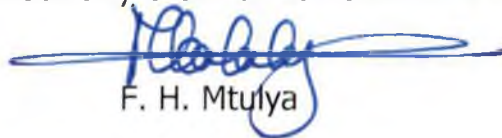
However, Mr. Mchome failed to attach the copy of the Order in the application to bolster his statement. In his submission Mr. Mchome contended that paragraph 15 in the affidavit was not contested by 9th paragraph of the counter affidavit as Mr. Kaijage noted the fault and admitted that it will not cause any injustice. In his opinion Mr. Mchome thinks that the complaint registered by Mr. Kaijage does not meet the standard set in **Mukisa Biscuits Manufacturing Co. Ltd v. West Ends Distributors Ltd** [1966] EA 696 and that even if there are faults, the available remedy is to strike out the application or expunge the offending paragraphs.

On his part **Mr. Stephen Kaijage** was of the view that Mr. Mchome had admitted the fault on lies and the precedent of **Ignazio Messina v. Willow Investment SPRL** (supra) has not been adjusted by any other decision of the Court. In his opinion, falsehood goes to the root of the matter and affects the whole application hence an appropriate order is dismissal order.

I have cited the Court's decision, with its associated reasoning and holding. However, the Court remained silent on the appropriate remedies available for affidavits that contain lies. However, the court is certain that an affidavit can contain lies as it stated at page 4 of the judgment. In the present application, it is obvious that after registration of all necessary materials, and

arguments for and against the application, it was vivid that there are untruth statement in the 15th and 16th paragraphs of the affidavit of the applicant's learned counsel.

However, the dispute is on the available remedies. The Court was silent as I indicated above, but this court in the precedent of **Robert S. Lova & Another v. Ministry of Natural Resources and Tourism & Another** (supra) stated it all. The remedy is to strike out the application and I will follow the course for obvious reason that I have not heard the application on merit. Having said so, I have decided to strike out the application for want of proper record. I do so without any order as to costs. It is so ordered.



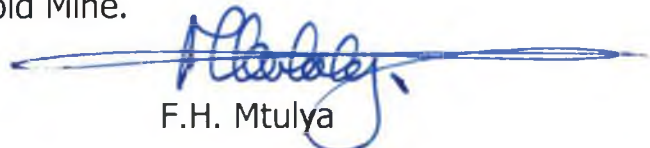
F. H. Mtulya

Judge

24.10.2022



This ruling was delivered in chambers under the seal of this court in the presence of the respondent, **Mr. Sinda Nyamboge Ntora** and his learned counsel, **Mr. Stephen Kaijage** and in the presence of **Mr. Waziri Mchome**, learned counsel for the applicant, North Mara Gold Mine.



F.H. Mtulya

Judge

24.10.2022