

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 94 OF 2022

(Originating from Land Case No. 36 of 2018)

SALMA SAID HAMZA APPLICANT

VERSUS

KHER SAID OMARY (Administrator of Estate

of late TATU HAMZA 1ST RESPONDENT

VALENCE EMMANUEL MASSAWE 2ND RESPONDENT

RULING

Date: 01 & 01/12/2022

NKWABI, J:

Against the application for extension of time within which to lodge notice of appeal in Land case No. 36 of 2018, and presenting a letter requesting for copies of ruling, drawn order and proceedings of the said Land case No. 36 of 2018 the respondents' counsel, Mr. Peter Edward Chuwa, preferred a preliminary objection on two points as follows:

1. That the application is bad in law for being accompanied by a defective affidavit that contains false information and failure to disclose source of information of the facts deposed.

2. That the application is bad in law for failure to attach the ruling on which the extension of time is being sought.

It was the contention of Mr. Juma Nassoro, learned advocate for the applicant that, the 1st limb of preliminary objection goes to the merits and demerits of the application hence offends the authority of **Musika Biscuit Manufacturing Co. Ltd. v Westend Distributors Ltd.** [1969] EA. 696. I agree that the determination of the 1st limb of the preliminary objection entails ascertainment of facts. This is part of what the learned counsel for the respondent submitted which shows that the 1st limb of the preliminary objection calls upon this court to ascertain facts:

*"The applicant falsely deposed in her affidavit that she was unaware of the delivery of the ruling and that she was told that she would be notified of the delivery of the ruling but in vain. That **fact** is false ..."*[emphasis mine].

As to none-disclosure of the source of information, it is trite law that offensive paragraphs may be expunged or ignored and leave the rest paragraphs intact for use. See **Duncan v. Zanfra [1970] H.C.D. No. 262**

*"It is a settled principle that where an affidavit is made on information it should not be acted on by any Court unless the sources of the information are specified. It is clear that in portions of the affidavit above that the deponent was stating acts which were to his knowledge and facts which were from information and **since the sources of the latter were not given those facts would not be considered by the court.** In the case of the National Bank of Commerce v. Shankerbhai Desai and others (1969) H.C.D. 206 it was held that, although an affidavit was defective, where there are facts properly deposed to on which the court could act it should do so."*[emphasis mine].

Thus, the first limb of the preliminary objection fails for the above reasons.

On the 2nd limb of the preliminary objection which states that the application is bad in law for failure to attach the ruling on which the extension of time is being sought, the counsel for the applicant stated that there is no provision in the CPC that requires attachment of the ruling.

I am inclined to reject this objection on point of law because the respondent calls me to ascertain on facts which are the date of delivery of the ruling which is alleged to be 17th September 2021 on the copy of the ruling. I substantiate my position by quoting what the counsel for the respondent argued:

"However, the Applicant in furtherance of the falsehood of her depositions chose not to attach the said ruling in the Application for the court to scrutinize it in the determination of her application."

The cited case of **Moses Luka v. Habib Jumanne**, Misc. Land Application No. 89 of 2020, HC, Land Division (unreported) by the counsel for the respondent is distinguishable because, that decision was given at the time the Court was making a ruling on merits and not on a preliminary objection.

I quote what the High Court said in the case of **Moses Luka** for clarity:


"The decision ought to have been part of the records supporting the application so as to give the Court an opportunity to examine a number of issues, including the date that it was delivered. Further, in paragraph 7 of the Applicant's affidavit, it is deponed that the application has

overwhelming chances of success. That could only be appreciated after reading the impugned decision ...”

In the circumstances, both limbs of the preliminary objection are dismissed with costs.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 1st day of December 2022.

 *J.F. Nkwabi*
J. F. NKWABI
JUDGE