

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

MISC. LAND APPLICATION NO. 05 OF 2022

(Arising from Land Appeal No. 56 of Kigoma District Land and Housing Tribunal and Original Land case No. 19 of 2016 of Msambala Ward Tribunal)

MTABAZI ADAMU CHALUKULA-----APPLICANT

VERSUS

BODI YA WADHAMINI JIMBO LA KATOLIKI KIGOMA-----RESPONDENT

RULING

14th March & 20th April, 2022

F. K. MANYANDA, J

This is a ruling in respect of preliminary objection held out by the Counsel for the Respondent to the hearing of this application on two points, namely: -

- i. The Applicant's affidavit is not properly verified in terms of Order VI Rule 15(ii) of the Civil Procedure Code [Cap. 33 R. E .2019]



- ii. The deponent in the impugned affidavit does not specify by reference to the numbered paragraphs of the affidavit what verifies of his own knowledge and what he verifies upon information received and believed to be true.

Briefly, the background of this matters is that the applicant is making an application to the court to extend the time within which for the Applicant to file an appeal.

The Applicant who was the Appellant before the District Land and Housing Tribunal for Kigoma hereafter, " the DLHT" is dissatisfied by the decision which dismissed his appeal and confirmed a decision of the Msambara Ward Tribunal which declared the Respondent owner of the land they dispute. The Judgement of the DLHT was delivery on 18/11/2019 when the Applicant sought to appeal to this court, he found himself out of time for delay of two (2) years and two months and twenty-two days or a total of 812 days. He filed this application with intention of asking this Court to condone the delay and allow him file his appeal. The Counsel for the Respondent as stated above filed the objection.

At the oral hearing of the preliminary objection the Applicant was represented by Mr. Masendeka Anania Ndayanse, learned Advocate and Ms: Joyce Godfrey, learned Advocate represented the Respondent.



Ms. Joyce Godfrey submitted in support of both the first and second point in the preliminary objection arguing that the verification clause of the Applicant affidavit is defective for violating order VI Rule 15(2) of the Civil Procedure Code, [Cap. 33 R. E. 2019]. She pointed out the failure been that it fails to specify which fact are based on own knowledge of the affidavit and which ones are based on information obtained from another person. She insisted that the Order mandatorily requires to specify the paragraphs by listing those whose facts are within personal knowledge of the Applicant and those based on information. She prayed the affidavit to be struck out as well as the application with costs.

On his side Mr. Anania Masendeka Ndayanse responded opposing the preliminary objection in both points of law arguing that the affidavit is valid relying on the principle of overriding objectives that the same does not lead courts to strangling justice. That the overlooked matter in the affidavit is curable. He prayed the objection to be overruled.

In rejoinder Ms. Joyce Godfrey reiterated her submissions in chief and added that it is not a matter of strangling justice but of mandatory rules of procedure which must be followed,

Those were submission by the counsel for both parties. The issue in this matter in whether the defect is curable under the principle of overriding



objective. I say so because Mr. Ndayanse concedes that the verification clause of his affidavit is defective. It fails to distinguish which facts in the paragraphs are sworn within the knowledge of the deponent and which ones are based on information.

I have read the affidavit which is sworn by one Masendeka Anania Ndayanse, who is the Counsel of the Applicant and found that the some contain five paragraphs. Paragraph four (4) gives facts on the cause of delay and it is divided into two parts; it reads as follows: -

"4 That the cause of the Applicants delays to file the relevant appeal is attributed to the following grounds: namely.

- i. That the delay from 18th day of November, 2019 to 30th day of June, 2021 is attributed to late supply of the relevant impugned judgement and decree on appeal by the District Land and Housing Tribunal,*
- ii. That the delay from 30th day of June, 2021 to 20th day of February, 2022 is attributed to applicant family difficulties communication difficulties with his Advocate and the illegalities of the impugned Judgement (decree to be appealed against,"*

When it came to verification, the clause states as follows: -

"Verification: I Masendeka Anania Ndayanse, hereby verify that all what is stated in paragraphs 1,2,3,4 (i) (ii) and 5 (a) (b) and (c) are true to best of my own knowledge and information supplied to me by the applicant.

I agree with the Counsel for the Respondent Ms. Joyce Godfrey and as conceded to by Mr. Ndayanse himself, that the information supplied to him by the Applicant ought to be specified.

As per paragraph 4, there are some facts which may be within the knowledge of the deponent but there are facts which are based on information told to him by Applicant. The latter facts are hear say to the deponent, they need an affidavit from the person who told him. This is the reason which makes it even more important for the verification clause to categorize by mentioning the paragraph of which facts are based on personal knowledge of the deponent and those based on information; failure of which renders the affidavit incurably defective and incompetent.

There is plethora of authorities on this position of the law. In the case of **Salima Vuai Fom vs Registrar of Cooperative Societies and Three Others**, [1995] TLR 75 the Court of Appeal held, where an affidavit did not specify which facts based on the knowledge of the deponent and which based on information, as follows: -

"As nowhere in the affidavit, either as a whole or in any particular paragraph, is it stated that the facts deposed to or any of them, and if so which ones, are true to the knowledge or as advised by his advocate, or are true to his information and belief the affidavit was defective and incompetent and was properly rejected by the chief Justice."

In the case of **Paul Makaranga vs Republic**, Criminal Application No. 3 of 2010 (unreported) the Court of Appeal explained what means by a verification clause it states as follows: -

"That part of an affidavit which shows the facts the deponent asserts to be true of his own knowledge and those based on information or beliefs".

In that case, the verification didn't specify the paragraphs with facts based on personal knowledge and those on information as belief. The court struck out the affidavit.

In yet another case of **Anatoly peter Rwebangira vs The Principal Secretary, Ministry of Defence and National Service and Another**, Civil Application No. 548/04 of 2018 (unreported) the Court of Appeal of Tanzania explained at length on a rationale for verification clause to comply with this principle of law. It stated as follows: -

*"In the present application according to the application, according to the applicant verification clause which we have earlier on reproduced, it is not possible to decipher the facts which are true based on his belief. Therefore, with respect to Mr. Bitakwate's argument not sound on the specification not been necessary merely because the facts in the application applicant's affidavit are based on knowledge and belief. **We say so because one, that is against the rule governing the modus of verification is on affidavit and two without the specification neither the court nor the Respondent can safely gauge as to which of the deponent's facts are based on the applicants own knowledge and what are based on his belief.** In this regard, we agree with the learned senior state Attorney that the verification clause of the applicant's affidavit is rendered defective which adversely impacts on the entire affidavit which is also rendered defective."*
(emphasis added)

The string of authorities above show that a defective clause deserves to be struck out and once it is struck out, then the whole affidavit is also gone.

It is my findings that the defects in the affidavit can not be let to go as Mr. Ndayanse suggests under the umbrella of the principle of overriding objectives. I say so because such an affidavit with a defective clause will

prejudice the Respondent in his defense and impact difficulty to this Court to act on mixed hearsay and none hearsay evidence without any specification. Blanket verification is not allowable in law and the same can't be saved by the principle of overriding objectives.

In the result I find the preliminary objection meritorious consequently, I do here by strike out verification clause hence rendering the whole affidavit defective which I do hereby strike it out also.

Since the application lacks an affidavit to support it the same is incompetent, I also strike it out with costs. It is so ordered.




F.K. Manyanda

Judge

20/4/2022