

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND CASE NO 19 OF 2022

PENINA MHERE WANGWE	1ST APPLICANT
MARKO CHACHA GICHERE	2ND APPLICANT
HELENI DANIEL MATAIGA	3RD APPLICANT
EMMANUEL AUGUSTINO WANGWE	4TH APPLICANT
ALEXANDER CHACHA NYANKAIRA	5TH APPLICANT
NYANGIGE NYAMARUNGU MWITA	6TH APPLICANT
JOHN MENYE MWITA	7TH APPLICANT
JASTINE MWITA KIMUNE	8TH APPLICANT
MATIKO BISENDO MARWA	9TH APPLICANT
DAUDI JUMA NYANKAIRA	10TH APPLICANT
ESTER DAUDI NYANKAIRA	11TH APPLICANT
MAKENGE DANIEL MAKENGE	12TH APPLICANT
MATONGO JUMA NYANKAIRA	13TH APPLICANT
KOROSO SASI RAGITA	14TH APPLICANT
ALLY MUYUI CHACHA	15TH APPLICANT
MATAIGA SAMMY DANIEL	16TH APPLICANT
ROBEN MOTENGI MARWA	17TH APPLICANT
BHOKE PETER CHACHA	18TH APPLICANT
AGNES PAULO CHACHA	19TH APPLICANT
MWITA CHACHA MUYUNI	20TH APPLICANT

OTAIGO CHACHA MHIRI	21 ST APPLICANT
BEATRICE DANIEL BWANA	22 ND APPLICANT
MARIA JUMA MASEYA	23 RD APPLICANT
SIMON MSETI WANGWE	24 TH APPLICANT
ROBI CHACHA MHIRI	25 TH APPLICANT
MWITA CHACHA KEGOYE	26 TH APPLICANT
DANIEL ELIYA MATIKO	27 TH APPLICANT
PETER MNIKO MWERA	28 TH APPLICANT
WINFRIDA SAMWEL MOTENGI	29 TH APPLICANT
SAMWEL MOTENGI MARWA.....	30 TH APPLICANT
NICODEMAS KITUNKA JOHN	31 ST APPLICANT
GEORGE NYAMOHONO NYAMONGE	32 ND APPLICANT

VERSUS

NORTH MARA GOLD MINE LIMITED	RESPONDENT
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RULING

30th Jan & 17th March 2023

F. H. Mahimbali, J.:

The issue this court is invited to respond is whether the verification clause worded "*I/we Penina Mhere Wangwe, Marko Chacha Gichere, Heleni Daniel Mataiga ... and George Nyombo Nyamonga each one of us, do hereby verify that all what is stated in paras 1,2,3,4,5,6,7,8,9,10,11 including all the subparagraphs to 4,5,and 6 are true to the best of our*

own knowledge” suffice to be a proper verification clause for a joint plaintiffs suing in a joint suit.

The defendants’ counsel are of the view that a blanket verification clause in which one defendant having a distinct cause of action against the defendant cannot verify for another in the circumstances of this case.

In arguing the preliminary objections, Mr. Mchome and Kapinga senior counsel represented the defendant in supporting the preliminary objections whereas for the plaintiffs, Dr. Chacha Murungu and Mr. Daudi Mahemba also learned advocates who oppose the preliminary objections, represented the plaintiffs.

Mr. Mchome arguing in support of the preliminary objections, submitted that since each plaintiff has his or her own cause of action against the defendant, it is improper for all of them to verify blanketly (in all facts) saying *“I/we penina Mhere. ... and George Nyomoho Nyamonga each one of us do hereby verify that all what is stated in paragraphs 1,2,3,4,5,6,7,8,9,10,11 including subparagraphs to 4,5,and 6 are true to the best of our knowledge”* should mean each one verified his respective facts as contained in the plaint.

In reliance to this position, Mr. Mchome cited several authorities such as **Aloys Lyenga vs Inspector General of police and Another** (1997) TLR 101-104, **Mantrac Tanzania Limited vs Humior Compan Limited and Another**, Miscellaneous, Commercial case No 70 of 2017, High Court Commercial Division, DSM, **Edgepoint company Limited vs Julius Nkonya** Land case no 135 of 2020, High Court Land Division at Dar es Salaam (unreported).

As what is the fate of the joint verified facts without specific verification by each plaintiff which would then only suggest as facts based on information and not of personal knowledge. In responding to this, Mr. Mchome cited the case of **Francis M. Njau vs Dar es Salaam City Council**, Civil Appeal No 28 of 1994, CAT at Dar es Salaam (unreported), that where facts which were alleged to be of personal knowledge of one party will be an information from another person if not clearly stated so, it was held being an improper to be verified by another person.

In essence, what Mr. Mchome argues is this closely reading the plaintiffs' verification clause, does not show who has verified which paragraph. It therefore means that even those paragraphs which are of personal knowledge to a particular plaintiff (say the first plaintiff) have

been verified by all other plaintiffs to be based on their personal knowledge and vice versa. It is the mind of defendants' counsel that the proper methodology in a such a joint case of more than one plaintiff, it was for each one plaintiff to verify on his own distinct factual allegations to his own knowledge, and as regards to the other plaintiffs the verification ought to have been based on information. Otherwise, it is an omnibus verification clause.

On his part, Dr. Chacha for plaintiffs partly admits that there is a conflicting view by the court on this aspect of verification clause. However, he insisted that there is a clear difference between verification clause in the affidavit and that of plaint. Nevertheless, relying on the decision in of this court in the case of Penina Muhere, Dr. Chacha was of the view that, by analogy, I should also apply the similar reasoning to this case as well.

I have sufficiently digested the legal submissions argued by both sides. To start with, I better revisit what Order VI, Rule 15 says on rule of pleadings:

15.-(1) 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.

*(2) The person **verifying shall specify**, by reference to the **numbered paragraphs of the pleading, what he verifies of his own knowledge** and what he verified upon information received and believed to be true.*

*(3) The **verification shall be signed** by the person making it **and shall state the date** on which and **the place** at which it was signed.*

For sure what a plaintiff to the plaint is required to do is to itemize in verification clause matters which are of his personal knowledge and those on information and belief if any (see **Aloys Lyanga vs Inspector General of Police and Another** [1997]TLR 101-104).

I also understand that just as in representative or joinder suits, no one will testify for the other, similarly plaintiffs suing jointly (joinder of plaintiffs) each must be suing for his own interests though jointly combined. He is therefore suing for his own reliefs though allegedly existing or arising from the same transaction.

It is legally true that for pleadings to be legally viable, the verification clause should be free from any ambiguity. It must be clear and precise. A

defect in the verification clause definitely affects the pleadings (plaint) and therefore purported filed cases becomes affected on incompetence and on that, is liable for appropriate legal action.

Our CPC does not directly define what is verification clause. However, taken as a whole, it is a statement of confirmation of correctness, truth or authority of pleading. It is a solemn or sacred declaration by a party that the facts stated by him in the pleadings are true and correct to his personal knowledge. As a matter of law, the person verifying shall specify by reference to the numbered paragraphs of the pleadings what he verified of his own knowledge and what he verifies upon information received and believed to be true. As a matter of law, verification shall be signed, dated by the person making it.

So long as in joinder of plaintiffs no one sues for the other, each must specifically verify for his own facts. None should verify for the other. That said, a blanket verification clause is as good as no verification unless there is a specific itemization of matters which are of each one's personal knowledge and those on information and belief. That notwithstanding all the cited authorities though legal works, however were not of good assistance to depart from the traditional verification clause in a joint suit.

The cited authorities mainly insist on strict compliance to the rule on verification clause. Generally, on the importance of stating which facts are of one's own knowledge and those based on information. However, none talked of the manner of verifying in a case of joinder of plaintiffs or defendants. There has been no useful material for Court's guidance to depart from the acceptable modality of verifying. Insisting that what is verified by one plaintiff should not be owned by another, I think can be a misconception in cases of joinder of plaintiffs or defendants as the parties have common interests arising from the same cause of action. Therefore, there is a lot of sharing in common in joinder of parties as in this case. In my considered view, to rule otherwise, is opening a Pandora box which may paralyze all cases filed in court in this acceptable style if Mr. Mchome's view is noted by the court.

My linguistic legal interpretation to this, parts way from the persuading opinion by Mr. Mchome and Kapinga learned advocates on the wording of the verification clause: *"I/we Penina Mhere Wangwe, Marko Chacha Gichere, Heleni Daniel Mataiga ... and George Nyombo Nyamonga each one of us, do hereby verify that all what is stated in paras 1,2,3,4,5,6,7,8,9,10,11 including all the subparagraphs to 4,5,and 6 are*

true to the best of our own knowledge” as legally suffices signifying each one’s paragraphs confirming to the corresponding paragraphs that what has been pleaded is true to each one respectively. That has been the acceptable modality of verifying clause in cases of joinder of plaintiffs or defendants. It then remains the duty of each one plaintiff in the case, to establish his own claims as per law. To adopt what Mr. Mchome is persuading the Court to do, I am afraid of making a new jurisprudence in this jurisdiction which for sure will be strange. That being a pleading, it suffices unless it was a linguistic academic work. I maintain the legal construction provided in the case of Penina Muhere on the aspect of joint verification clause.

That said, the preliminary objection raised is devoid of merit. The same is overruled with costs in the main case.

DATED at MUSOMA this 17th day of March, 2023.




F. H. Mahimbali

JUDGE