

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LAND CASE NO. 5 OF 2022

SOUTHERN AFRICA EXTENSION UNIT (SAEU).....PLAINTIFF

VERSUS

KIBABI S/O BUILDING CONTRACTOR CO. LTD.....1st RESPONDENT

DEUS S/O KIBABI NTABHINDI.....2nd RESPONDENT

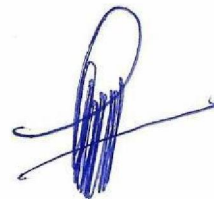
RULING

25/7/2023 & 7/8/2023

Mlacha,J.

This is a ruling on preliminary points of objection raised by counsel for the defendants, KIBABI S/O BUILDING CONTRACTOR CO. LTD and DEUS S/O KIBABI NTABHIND, Mr. Daniel Rumenyela. The notice which was lodged reads as under: -

"a) This plaint is bad in law as it contradicts Order VI rule 15(1) and (3) of the Civil Procedure Code cap 33 R.E.2019 as it contains incurably defective verification clause which was wrongly verified by both the advocate and Mr.Mathias James Mntangi who stated that he is the deputy director of 'the applicant' who is not a party to this case.

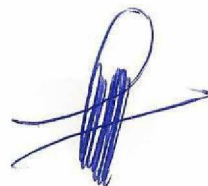


b) This case is bad in law because the plaintiff namely SOUTHERN AFRICAN EXTENSION UNIT (SAEU) is a different person from the really owner SOUTHERN AFRICA EXTENSION UNIT, the property in dispute BUSEKO HILL Secondary school shown in paragraph 5 of the plaint differs with the property shown in the ANNEXTURE BS-A in the plaint which shows that the name of the school is 'BUSEKO HILL" and not BUSEKO HILL SECNDARY SCHOOL as alleged by the plaintiff"

The plaintiffs, SOUTHERN AFRICA EXTENSION UNIT (SAEU) were represented by Mr. Eliutha Kiviyiro. Hearing was done by oral submissions. Both Mr. Daniel Rumenyela and Mr. Eliuta Kiviyiro have addressed the court on the objections with opposing views.

Order VI rule 15 (1) and (3) under which the first limb of objection is based reads:-

*"(1) Save as otherwise provided by any law 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)...Not Applicable

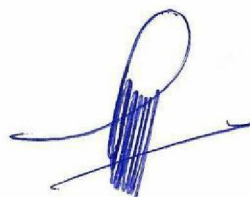
(3) Verification shall be signed by the person making it and shall state the date on which and the place at which it was signed. (Emphasis added)

With respect to Mr. Kiviyiro, there is no legal requirement under rule 15 for an advocate to sign the verification clause. That is the domain of the party. Order VI rule 14 of the CPC which he cited has nothing to do with the verification clause. It states as under:-

"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 dully authorized by him to sign the same or to sue or defend on his behalf.

"(Emphasis added)

Rule 14 talks of pleadings not verification. That is to say, the party *and* his advocate *shall sign at the end of the pleadings*. Rule 15 require a party (not



his advocate) to sign the verification clause. It adds that, if for some reason he cannot do so, verification can be done by '*some other person*' duly authorized by him. This '*some other person*' can be a relative, an employee or his advocate acquainted with the facts of the case. An advocate can verify the pleading on behalf of a party on two conditions. One, where the party is unable to do so and two, if he is acquainted with the facts. Otherwise verification is none of the business of a counsel.

I agree with Mr. Kiviyiro that questioning the name of the plaintiff and comparing it with what is in the annexure amounts to going to issues which cannot be resolved without calling evidence. That is going outside the parameters of a preliminary objection. But, I don't agree with him that having the word '*applicant*' in the verification clause and failing to verify para 10 of the plaint is not a material irregularity. I find them as serious defects making the plaint defective.

I thus find that the verification clause is defective for being signed by both the counsel and the party, having the word '*applicant*' instead of the word '*plaintiff*' and for failure to verify para 10 of the plaint. A defective verification clause render the plaint of affidavit defective and untenable in law. See

Registered Trustee of the Baptist Convention of Tanzania @



Jumuiya Kuu wa Wabaptisti v. James Kasomi and 4 other,
Miscellaneous Civil Application No. 35 of 2021 (Manyanda J. HC Mwanza,
unreported).

With this finding, the suit is struck out with costs.

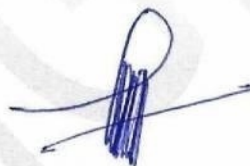


L.M. Mlacha

Judge

7/8/2023

Court: Ruling delivered. Right of Appeal explained.



L.M. Mlacha

Judge

7/8/2023

