

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**LAND APPLICATION NO. 27 OF 2023**

*(Arising from the Judgment of Execution Application No. 199 of 2021 of District Land and Housing Tribunal of Shinyanga at Shinyanga dated on 04/10/2022, which is coming from Land Appeal No. 34 of 2009, which originate from Land Case No. 100 of 2008 from the District Land and Housing Tribunal of Shinyanga at Shinyanga)*

**1. HAMIS NKINDWA .....**  
**2. PETER AMOS .....** } **APPLICANTS**

**VERSUS**

**KASARAGE ELIAS NYAGA..... RESPONDENT**

**RULING**

10<sup>th</sup> October & 24<sup>th</sup> November, 2023

**MASSAM, J.:**

The applicants herein above lodged this application seeking an order for extension of time to file an appeal to challenge the decision of the Judgment of Execution Application No. 199 of 2021 of District Land and Housing Tribunal of Shinyanga at Shinyanga dated on 04/10/2022, which originates from Land Appeal No. 34 of 2009, and from Land Case No. 100 of 2008 from the District Land and Housing Tribunal of Shinyanga at Shinyanga.

The application was brought under Section 14 of the Law of Limitation Act [Cap 89 R:E 2002], and Section 41 (2) of the Land Disputes Court Act, Cap 2016 RE2019, and all other enabling laws. The application was accompanied by an affidavit deposed by their counsel Miss Gloria Ikanda. After being served with the affidavit of the Applicants supporting the chamber summons, the respondent challenged it with a notice of Preliminary Objection (PO) canvassed on one ground that,

***This court was not properly moved to entertain the application as the applicant's verification is incurably defective.***

At the hearing of the PO, the applicants were represented by the learned advocate, Miss Gloria Ikanda while the respondent was represented by the learned advocate, Mr. Rugamila Emmanuel Minani.

In arguing on the above Preliminary objection, the Respondent submitted that, the Land Dispute Court Acts, 2002, with Regulations of 2003, provides for the format in which the verification should be provided and under Regulation 3(2) it offers for form No. 1, where by item No. 8 clearly indicates on how verification should read.

He submitted that, from the verification made by the advocate for the applicants, it does not express in which capacity she certified the

deponed averment and also, she did not say whether she is the applicant herself or Advocate or representative in the application she sworn to.

Again, the verification does not depict the source of information. For clarification he cited Section 56(2) (f) of the Act and insisted that, the application should be struck out with costs.

In her response, Miss Gloria submitted that, it is not in dispute that, the law under **Order XIX Rule 3 of the Civil Procedure Code** provides on how an affidavit should be, and failure to disclose the source of information renders it defective. He refers this court to the case of **Salma Vuai Fom Vs. Registrar of Cooperative Societies and Others**. [1995] TLR 75.

She further submitted that, it is true that the applicant's advocate made some errors to the submitted affidavit but the same may be cured upon the orders of the Court if prayed for, since that is the advocate's mistakes are not going to the root of the matter and that directives may be curable. She cited the case of **Sanyou Service Station Ltd Versus BP Tanzania Ltd (Now Puma Energy (T) Ltd**, Civil Application No. 185/17 of 2018 CAT Unreported. She therefore prayed to be allowed to amend the affidavit supporting the Chamber summons and the court to proceed with the hearing of the application on merit as per **Article 107**



**A (2) (a) of the Constitution** of the United Republic of Tanzania [1977]. Again, she cited the case of Phantom **Modern Transport [1985] Ltd Versus D.T. Dobie (T) Ltd** and the case of **The University of Dar es Salaam Versus Mwenge Gas and Lub 011 Ltd**, Civil Application No. 76 of 1999 at Pg 9, also the case of **Michaele Clement Vs. Abdallah Mfaume Mdogwa and Others**, Misc. Land Application No. 165 of 2022, whereby in all those cases leave were granted to amend the affidavit supporting the application due to its defective.

She therefore prayed that, the affidavit should not be struck out but rather the court to allow the amendments of the affidavit and be refiled properly.

In brief rejoinder, the respondent submitted that, the amendment of the said affidavit could have been possible if the defect could have been disclosed by the applicants before the respondent has raised it. He contended further that, since there were several adjournments, and if the applicant's advocate could have been smart enough, she could be able to discover the said defects at the earliest stage and the court could order amendments. He therefore insisted that the said application should be expunged with costs.

Having heard the submissions made by both counsels and having gone through the pleadings the issue worth for determination is **whether the raised preliminary objection has merit.**

Starting with the counsel for the respondent he submitted that the application brought by the applicant was defective for being supported by a defective affidavit which was deposed by the Counsel for the applicants without showing in which capacity she signed the same hence need to be expunged.

Similarly, the same was positively replied by the counsel for the applicants by admitting that, she made an error which renders the defectiveness of the application and it is for the interest of justice, she prayed to amend it.

Basing on the above submissions this court has revisited the records of the application and noted that the applicants to the instant case are **Hamis Nkinda** and **Peter Amos**. However, the affidavit supporting their application was deposed by one "**Gloria Ikanda**" who is a stranger to the case without stating her relationship with the applicants.

It is well stated under **Order XIX Rule (3) (1)** of the Civil Procedure Code that,

***"Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications on which statements of his belief may be admitted"***

From the above provision it is clear that, the one who was required to sign the said affidavit were the applicants and not their advocates because the applicants are the one who wants to move this court by filling a chamber summons and the same must be supported by their affidavit.

Since the advocate for the applicants admitted that, the affidavit supporting the application was defective, this simply means that, the court has not been availed with a proper affidavit in the legal sense, to support the application and the application is therefore rendered incompetent, since the court was not properly moved.

Again, it was from the respondent that, in the verification clause, the same does not disclose as to who supplied the information. I have thoroughly gone through the verification clause and make reference to the case of **Salma Said Mang'uro vs. Mohamed Amiri, Misc. Civil Application No. 776 of 2018** (HC-DSM) (unreported) Hon. Mlyambina, J stated that,



***"The act of not specifically stating whether or not the applicant was known to him or her (the Commissioner) or was identified by a person who is known by the Commissioner for Oaths makes the affidavit fail short of correct declaration in the jurat of attestation."***

The court went further to quote the case of **Peter Mziray Kuga Vs. Anne Kilango Malecela & Others**, Misc. Civil Application No. 7 of 2006 (HC-Moshi) which quoted the case of **Ramadhani Pazi & Wambura Malima vs. Tanzania Civil Aviation Authority**, Revision No. 375 of 2013 (HC-Labour Division, DSM) (unreported) where it was stated:..

***"..... the identity of the deponent in the supporting affidavit must be stated truly in the jurat of attestation. Whether the Commissioner for oaths knows the deponent in person or has been identified to him by X the latter being personally known to the commissioner for oaths all that has to be stated truly in the jurat of attestation. The information of identification has to be clearly shown in the jurat"***

From the above cited cases this court is well satisfied that the submitted application is defective for being supported by a defective affidavit.

Besides, it was from the applicants that the court should grant an order for amendments but the respondent prayed that, the same could only be amended if the defect could have been disclosed by the applicant before the respondent has raised it, hence it has to be struck out.

In the case of **Omary Ally Omary vs. Idd Mohamed & Others**, Civil Revision No. 90 of 2003 (CAT-DSM) (unreported), the court has this to say,

***“, .....As a general rule a defective affidavit should not be acted upon by a court of law, but in appropriate cases where the defects are minor, the Courts can order an amendment by way of filling fresh affidavit or by striking out the affidavit but if the defects are of substantive nature, no amendment should be allowed as they are a nullity, and there can be no amendment to a nothing”***

From the above citation the question that follows is whether the defect in the applicant's affidavit is minor/fatal or of a substantive



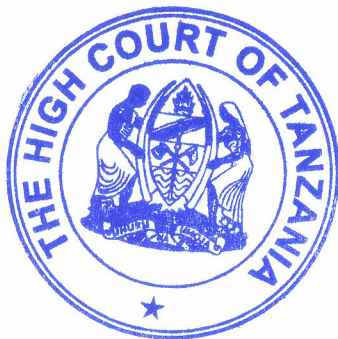
nature. In my view the defects is substantive since an affidavit is evidence on oath, therefore it has to disclose completely the information required in the jurat of attestation and again it has to be signed by the deponent.


Failure to indicate such an important requirement in the affidavit, it renders it incurably defective which is fatal and cannot be amended as prayed by the applicant's advocate as it goes to the root of the merit of the application so that are as good as there is no affidavit to support the application and hence no application for this court to consider. In the result, the preliminary objection is sustained.

The application is accordingly struck out with costs for being incompetent.

It so ordered.

**DATED** at **SHINYANGA** this 24<sup>th</sup> day of November, 2023.



  
**R.B. Massam**  
**JUDGE**  
**24/11/2023**