

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT
(IN THE DISTRICT REGISTRY OF MUSOMA)
AT MUSOMA
CIVIL REFERENCE No. 8 OF 2022

*(Arising from the District Court of Tarime at Tarime in
Taxation Cause 23 of 2021 & Civil Case No. 3 of 2021)*

VICTOR NESTORY NDABAGOYE APPELLANT

Versus

SINDA GETEBA RESPONDENT

RULING

15.02.2023 & 15.02.2023

Mtulya, J.:

The applicant, Victor Nestory Ndabagoye was dissatisfied by the decision of **District Court of Tarime at Tarime** (the district court) in **Taxation Cause 23 of 2021** (the cause) originated from **Civil Case No. 3 of 2021** (the case) decided by the district court, hence preferred **Civil Reference No. 8 of 2022** (the reference) in this court contending that the Taxing Master at the district court erred in law for taxing amended application for taxation emanated from a fault proceedings which pre-empted the raised point of Preliminary Objection in the cause.

However, before the application hearing could take its course, a point was raised resisting the jurisdiction of this court for want of proper application of the law enacted in Order VI Rule 15 (1) & (2) of the **Civil Procedure Code [Cap. 33 R.E. 2019]** (the

Code). When the Preliminary Objection hearing was scheduled for hearing today morning, **Mr. Dominic Jeremiah Chacha**, learned counsel for the respondent briefly submitted that the present affidavit has fault as the deponent did not distinguish information gathered on his own knowledge, and those received from other sources, and declined to mention any other source despite the fact that he stated to have verified on his own belief as displayed in the verification clause.

In order to move his course understood by this court Mr. Chacha cited the law in Order VI Rule 15 (1) & (2) and precedent in **Vuai Foun v. Registrar of Cooperative Societies & Three Others** [1995] TLR 75 contending that the present affidavit has faults. In replying the point of objection, **Ms. Florida Makaya**, learned counsel for the applicant contended that the cited provision of the Code regulates pleadings, which have already mentioned in the same provision.

According to Ms. Makaya, affidavits or counter affidavits are not part of the provision hence cannot be regulated by the indicated provisions. In her opinion, the affidavit is proper as the deponent stated information in his belief, and cannot be protested by the respondent. Rejoining the contest, Mr. Chacha cited the authority in **Jackson Sifael Mtares & Three Others v. The Director of Public Prosecutions**, Civil Appeal No. 180 of 2019

at page 16 where it was stated that affidavit and counter affidavits are indeed pleadings.

I have perused the record of present application and found that, the applicant's learned counsel verified that all information stated in the affidavit is true to the best of his own belief. The law in Order VI Rule 2 of the Code provides that:

*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.*

(Emphasis supplied)

The provision has been enacted by use of the words *shall* & *and*, which make it compulsory and condition necessary for deponent to distinguish information acquired on his own knowledge and those received from other sources, especially to persons purporting to swear on behalf of other persons (see: **Mohamed Abdillah Nur & Three Other v. Hamad Masauni & Two Others**, Civil Application No. 436/16 of 2022). Regarding the distinction between pleadings and affidavits, the reply is found at page 16 in the precedent of **Jackson Sifael Mtares & Three Others v. The Director of Public Prosecutions** (supra) that affidavits are indeed pleadings.

Having the law in Order VI Rule 15 (2) of the Code and indicated precedents of our superior court, I cannot be detained on the contest. I am moved to hold that affidavits and counter affidavits are part of pleadings and any person who do not comply with VI Rule 15 (2) of the Code, his application will be struck out for want of proper interpretation of the law, as I hereby do so. I do so without costs. Each party shall bear its costs. The reasoning of doing so is obvious that the dispute was not determined to its merit to enjoy the substance of the cause to its finality.

Ordered accordingly.

A blue ink signature of F. H. Mtulya, written in a cursive style with a long horizontal line extending to the right.

F. H. Mtulya

Judge

15.02.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of the learned counsels, **Ms. Florida Makaya** for the applicant and **Mr. Dominic Jeremiah Chacha** for the respondent.

A blue ink signature of F. H. Mtulya, written in a cursive style with a long horizontal line extending to the right.

F. H. Mtulya

Judge

15.02.2023