

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[DAR ES SALAAM -SUB-REGISTRY]

MISCELLANEOUS CIVIL APPLICATION NO. 3200 OF 2024

REF NUMBER 202402201000003200

REGISTERED TRUSTEES OF YOUTH SELF

EMPLOYMENT FOUNDATION (YOSEFO).....1ST APPLICANT

HAPPY ZABRON SAMBEGA2ND APPLICANT

CARNETIUS KASIYA KARIWA..... 3RD APPLICANT

VERSUS

THE GOVERNOR OF BANK OF TANZANIA1ST RESPONDENT

THE MANAGING DIRECTOR OF NMB PLC..... 2ND RESPONDENT

THE ATTORNEY GENERAL..... 3RD RESPONDENT

RULING:

21st May & 5th June 2024.

KIREKIANO, J:

The applicants herein lodged this application with the prayer to be granted leave to institute a representative suit against the respondents. This application is predicated under order 1 rule 8 (1) of the Civil Procedure Code Cap 33 [RE 2022] and is supported by a joint affidavit of applicants deponed by Ernesti Kanisius Ndimbo, the first applicant's Chairperson. The second and third applicants are the other deponents.

On 9th April 2024, when the application came before me for necessary orders, Mr Edwin Webiro, learned state attorney for the 1st and 3rd respondents, raised a legal point on the application's competency, arguing that the affidavit in support of the application was attested by a Commissioner for Oaths, Miss Jessie Steven Mnguto, who, on the material date, 24.01.2024, had no valid practising certificate.

After a brief dialogue, the parties locked horns on this issue. Given the above, I ordered the parties to file written submissions and address this court. Mr Edwin Joshua Webiro filed timely submissions for the first, second, and third respondents. Equally, Captain Ibrahim Bendera, learned advocate, timely filed the applicant's submissions.

I have read the parties' submissions and noted another point Mr Webiro raised: the application is against the wrong person. I reserve discussion and deliberation on this until the first point is resolved.

Now it is common ground that according to the Advocates Electronic Data base known as E-Wakili available at

<https://ewakili.judiciary.go.tz/#/ewakili/home> on 24.01.2024, Ms Jessie Stephen Mnguto, with roll number 689, had not renewed her practising Certificate. The parties' point of departure is whether, given the advocate's status in the system, the said advocate was an

unauthorised person to attest to the affidavit and the fate of the “attested” affidavit.

Mr Webiro's submission focused on Section 4 (1) of **the Notaries Public and Commissioner for Oaths Cap. 12 R.E 2019** that for a person to practise as a Notary Public and Commissioner for Oaths, he must have a valid practising certificate renewable annually given section 4 (2) of the same Act. As such, he was of the submission that, under section 38 of the Advocates Act Cap. 341 [R.E 2019] every practising certificate issued to an Advocate expires annually save that a licence renewed between 1st and 31st January shall be valid retrospectively from 1st January if the advocate had a valid licence by the thirty-first day of December of the preceding year.

Mr Webiro was of the submission that in terms of Section 59 of the Evidence Act Cap. 6 R.E 2019, this court can take judicial notice of the information found in the advocate database (*e wakil*) therein. In support of his submission, he cited this court position in the case of **Pangea Minerals Ltd v Petrofule (T) Ltd and 2 Others, Miscellaneous Commercial Application No. 51 of 2020, High Court Commercial Division at Dar es Salaam [Unreported]**, where this court took

judicial notice on the information available in the advocate database known as TAMS.

It was Mr Webiro's submission that the affidavit supporting the application was attested by an advocate and commissioner for oaths without a valid practising certificate, so it has no effect. He cited the decision in **Baraka Owawa vs. Tanzania Teachers' Union Miscellaneous Labour Application No 6 of 2020** and **Pangaea Mineral and Edson Osward Mbogoro versus Dr. Emmanuel John Nchimbi and Another, Civil Appeal No. 140 of 2006** to support his submission.

On his part, Mr Bendera intimated his contemplation of the law on affidavit, citing **Charles Christopher Humphrey & Others vs Kinondoni Municipal Council (Civil Application No. 456/17 of 2021) [2024] TZCA 277 (18 April 2024)** that an affidavit being a voluntary declaration of fact written down and sworn to by the declarator before an officer who is authorised to administer oaths must contain the truth within the deponent's knowledge.

It was Mr Bendera's submission that advocate Jessie Stephen Mnguto is a Notary Public and Commissioner for Oaths. She has an identification card since her name has not been removed from the roll,

and she has not been suspended. The applicant's counsel seemingly associated the lack of licence with what appears to have transpired and dealt with by the Tanganyika Law Society on penalties for late renewal of a licence after the 1st day of February 2024.

On the status of the advocate as it appears in the system e wakili, as decided in the case **of Pangea Minerals Ltd vs Petrofule (T) Ltd & 2 Others**, he was of the view that the Court determined it based on a TAMS web site record. In this case, the Court has to decide that in addition to the TAMS (sic) record, other sources can show that an Advocate is a practising advocate.

As a general rule, any person appearing in court or tribunal to give evidence should take an oath before he/she gives evidence, save where the law provides such an exception. The oath must be administered whether the witness gives evidence orally or by affidavit. In any case, it must be administered before an authorised person. This general rule of practice and procedure which appreciates that an affidavit for use in court is a substitute for oral evidence.

As I indicated earlier, the objection to the validity of the advocate who attested the affidavit was based on information in the advocate management system. I have considered Mr Bendera's submission that this

status of advocate validity can be based on more than just the advocate database. In the first place, I have revisited the advocate database now known as **e wakili**; the information note obtained explains that:

*E Wakili Tanzania is a web application (online) platform for qualified legal professionals to apply for admission and become advocates. **The Judiciary of Tanzania uses e-Wakili Tanzania to keep and manage all petitioners' applications, advocate renewals, and other applications.*** See

<https://ewakili.judiciary.go.tz/#/ewakili/home>

According to this system, the advocates' names and the status of their licence renewal are indicated. Concerning the advocate at issue, Ms. Jessie Stephen Mnguto, with roll number 689 for the year 2024, renewed her licence on **22.04.2024**. This is to say, on 24.1.2024, when she attended the affidavit with a view of attesting the same, she had no practising licence and was thus unqualified.

For the avoidance of doubt, the retrospective application of licence renewal provided under section 38 of the Advocate Act applies on two cumulative conditions: **one**, if the advocate renews her licence before 31 January, and two, if the preceding year the advocate had a valid practising certificate. In this case, Miss Mnguto's licence can not, as rightly argued by Mr Webiro, be salvaged by **section 38 of the Advocate Act**.

Now, a document that has been attended to by an unqualified person has no legal validity and has to be expunged from the record. This is the position of this court in several decisions, including **Baraka Owawa vs Tanzania Teachers' Union (Misc. Labour Application 6 of 2020) [2020] TZHC 751 (4 June 2020 Mohamed Shaban & Others vs Tanzania Electric Supply Co. Ltd (Revision No. 296 of 2017) [2018] TZHCLD 46 (11 May 2018)**. Equally, in this application, I maintain the same position and proceed to expunge the "affidavit" supporting the application.

It follows that, given Order XLIII rule 2 of the Civil Procedure Code, every application must be made by a chamber summons supported by an affidavit. Without the affidavit, the chamber summons lacks legs to stand; thus, the whole application is incompetent. Having ruled on this, I shall not address the other point of the proper or necessary part as, legally speaking, there is no application before me. Ultimately, the application is struck out, and respondents shall have the cost.



A. J. KIREKIANO.

JUDGE

05.06.2024

COURT:

The ruling was delivered in the chamber in the presence of Mr Halifa Ngemba, the learned counsel for the applicants, and in the absence of the respondents.



A. J. KIREKIANO.

JUDGE

05.06.2024