

IN THE HIGH COURT OF TANZANIA

(DODOMA SUB REGISTRY)

AT DODOMA

MISC. CIVIL APPLICATION NO. 39 OF 2023

(Arising from Civil Case No. 08 of 2023)

FRANK JONH NGONYANI..... APPLICANT

Versus

THE DODOMA CITY COUNCIL.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

Date of last order: 29th February, 2024.

Date of Judgment: 15th March, 2024.

E.E. KAKOLAKI, J.

Whether the affidavit is incurably defective to support applicant's application is the issue which this ruling seeks to address. The issue emanates from the two preliminary objections raised by the respondents herein to the effect that:

1. The affidavit is incurably defective for containing a defective verification clause contrary to Order VI Rule 15(1) of the Civil Procedure Code, [Cap. 33 R.E 2019].
2. The affidavit is incurably defective for contravening Order XIX Rule 3(1) of the Civil Procedure Code, [Cap. 33 R.E 2019].

At the hearing of the said preliminary points of objection the applicant was represented by Ms. Elizabeth Kagembe, learned advocate while the respondent enjoying the services of Mr. Omary Ngatanda, learned State Attorney. Both parties were heard viva voce. In this ruling I am intending to address each ground of objection separately and in seriatim as canvassed.

In support of the 1st ground of objection Mr. Ngatanda contended that, applicant's affidavit is incurably defective as the names of the verifying person are not disclosed in the verification clause, the omission which according to him is fatal and contravenes the provision of Order VI Rule 15(1) of the CPC. In his view, it was mandatory to indicate in the verification part of the applicant's affidavit names of verifying person as under the above cited rule verification can only be done either by the party or one of the party in the pleadings or some other person. None description of the verifying person's names in his view rendered the affidavit incurably defective hence cannot support the application as it was held in the case of **Sanyou Service Station Ltd Vs. PB Tanzania Limited (now PUMA energy (T) Limited**, Civil Application No. 185/17 of 2018 (CAT) as cited in the case of **Richard Ngwilanga Vs. Paulina Ntandi**, Misc. Criminal Application No. 55 of 2021 (HC).

In response Ms. Kagembe took a contrary view to that of Mr. Ngatanda when clarified that, the provision of Order VI Rule 15(1) of the CPC does not mandatorily press for naming of the verifying party rather insist on the need of that affidavit to be verified by the parties who made it. She said, in this matter verification was done by the applicant who prepared and signed it, thus in full compliance of the law. In her submission, even the relied on case by the respondents **Richard Ngwilanga** (supra) is distinguishable to the facts of the instant matter as in the said case the defect was that, deponent did not verify the affidavit instead it was the advocate who did so, but in this matter the same is verified by the deponent. She thus invited the Court to find the objection is without merit and dismiss it.

In rejoinder submission Mr. Ngatanda was insistent that, what was cited is the case of **Sanyou Service Station Ltd** (supra) as cited in **Richard Ngwilanga** (supra) on the effect of defective affidavit and not otherwise. The Court was therefore called to sustain the objection and struck out the application for not being supported by the proper and sound affidavit.

It is a settle principle of law that an affidavit is a substitute of oral evidence. See the cases of **Uganda Vs. Commissioner of Prisons Exparte Matovu** (1977) E.A 514 and **Jumuiya ya Wafanyakazi Vs. Shinyanga Regional**

Cooperative Union (1997) TLR 220. The above being the legal position, proper verification is one of the crucial part of the affidavit as it is aiming at **one**, showing true facts as to the deponent's own knowledge and **second**, specify or disclose which facts are from other sources which the deponents believes to be true if any as it was held in the case of **Anatory Peter Lwebangira Vs. The Principal Secretary, Ministry of Defence and National Service and the Hon. Attorney General**, Civil Application No, 548/04 of 2018 (CAT) Tanzlii. Now as to whether deponent's names should be stated in the verification clause as per the requirement of Order VI Rule 15(1) of the CPC, in my humble opinion I think the answer is yes for one good reason that, the court must know who is verifying the deposed facts be in the plaint or affidavit so as to be assured of what facts are in deponent's own knowledge and which ones are sourced from others sources as it was also held the case of **Anatory Peter Lwebangira** (supra). In in the instant matter the assailed verification clause reads:

VERIFICATION:

What is stated in paragraphs 1,2,3,4,5,6 and 7 is true to the best of my knowledge, save as to matters deponed to on information and belief, the sources and grounds whereof are respectively specified and set out hereinabove.

From the impugned verification part of the applicant's affidavit cited above, I do not see how it renders the said affidavit incurably defective for mere omission to state the deponent's names therein. I arrive to such conclusion as the use words "what is stated in paragraphs 1,2,3,4,5,6, and 6 is true to the **best of my knowledge...**" by the deponent is a clear inference that, the person whose knowledge is referred therein is none but the person (applicant) swearing the affidavit. In view of the above, I am in agreement with Ms. Kagembe that, the verification clause on the complained aspect was in compliance of the law as provided under Order VI Rule 15(1) of the CPC, hence dismiss this ground for want of merit.

In the second ground of objection it was Mr. Ngatanda's contention that, the applicant's verification clause infringes the provisions of Order XIX Rule 3(1) of the CPC for not disclosing the source of the information which are not from the deponent's knowledge. In other words he argued, the court has been burdened to search for the said source of information contrary to the law as Rule 3(1) of Order XIX of the CPC dictates that, affidavit shall be confined to facts which the deponent is able on his own knowledge to prove, though the statements of his belief can be admitted. The omission by the

applicant Mr. Ngatanda argued, renders the affidavit incurably defective hence the same should be struck out.

In her reply Ms. Kagembe was straight to the point by stating that what is contained in paragraphs 1,2,3,4,5,6, and 7 of the affidavits is true to the best of the applicant's knowledge, as no single paragraph was left behind unverified. To her submission therefore, the ground of P.O is devoid of merit and should be dismissed with costs. In rejoinder Mr. Ngatanda maintained that, since in the verification it is stated there is information which its source and grounds are specified and set out in the affidavit, then its source ought to be disclosed failure of which renders the affidavit incurably defective and incapable of supporting the application. Otherwise he reiterated his submission in chief.

Having considered the fighting submission by the parties and glanced at the assailed verification part of the affidavit as cited above, it is without dispute to this Court that, all the facts deposed in paragraphs 1,2,3,4,5,6 and 7 of the application were verified by the deponent to be in his own knowledge. I would therefore endorse Ms. Kagembe's submission that, none of the paragraphs in the said affidavit was left unverified. The fact that, there were other explanations on the information and belief, the sources of which are

not disclosed, I find could not in any way to have affected the truthfulness of the facts deponed from deponent's own knowledge since the same have not even been disclosed to come from which paragraph in the affidavit. I therefore find the complained of defect is inconsequential and proceed to hold that, the verification part of applicant's affidavit complied with the requirement of the provisions of order XIX Rule 3(1) of the CPC and discount the second ground of objection.

In view of the above discussion, I answer the issue raised above in negative as the affidavit in support of the applicant's application is legally in place. The raised preliminary objections are therefore dismissed as it is hereby ordered that, the application should be heard on merit.

It is so ordered.

Dated at Dodoma this 15th March, 2024.



E. E. KAKOLAKI

JUGDE

15/03/2024.

The Ruling has been delivered at Dodoma today on 15th day of March, 2024, by video conference in the presence Ms. Elizabeth Kagembe, advocate for the applicant, the applicant in person, Ms. Kumbukeni Kondo and Ms.

Ilambona Mahuba, State Attorneys for the Respondent and Ms. Verdina Matikila, Court clerk.



E. E. KAKOLAKI
JUGDE
15/03/2024.

