

**IN THE HIGH COURT OF TANZANIA**

**COMERCIAL DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS COMMERCIAL APPLICATION NO. 131 OF 2017**

**BANK OF AFRICA TANZANIA LIMITED .....APPLICANT**

**VERSUS**

**ISSA KITIVO MDOLA .....RESPONDENT**

**RULING OF THE COURT**

**K. T. R, Mteule, J**

***7<sup>th</sup> October, 2021 & 30<sup>th</sup> November, 2021***

This was an application for extension of time for the Applicant to lodge an application for extension of time to set aside the dismissal order of dated 23 June 2016.

The respondent raised a point of preliminary objection against the application premised on the point that the verification clause of the affidavit of the applicant in support of the application is fatally defective.

That it violates **Order XIX Rule 3(1) and (2) of the Civil Procedure Code (Cap 33 R.E. 2002) and Rule 74 (1) and 2 (d) of the High Court (Commercial Division) Rules, 2012 Government Notice No. 250 of 2012.**



That the affidavit is fatally defective since paragraphs 3, 4, 5, 6, 7, 8 and 9 of thereof are facts or allegations based on information or hearsay received from different sources and the verification clause is defective as it does not state the source of information and belief of all those paragraphs as required by law.

The Respondent filed counter Affidavit in which all substantive facts of the Affidavit were disputed. The Preliminary objection was argued by Written Submissions where the Respondent drew and filed his own submissions while the applicant's submissions were drawn and filed by Mr. Godwin Muganyizi Advocate.

In his submission, the Respondent faulted the contents of Paragraphs 3, 4, 5, 6, 7, 8 and 9 of the challenged affidavit alleging them being hearsay. He argued that the deponent of the affidavit states that the source of the facts was other persons such as Mario Mbilinyi and Godwin Muganyizi. The Respondent cited the case of **Salima Vuai Foun vs Registrar of Cooperative Societies and 3 others [19995] TLR 75 CA** where the Court of Appeal dismissed an application for being incompetent on the same ground.

In reply to the respondent's submission, Mr. Muganyizi challenged the applicant's submissions for lacking merit. According to him, the deponent of the affidavit happened to be the litigation Manager of the Applicant



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therefore all the cases of the Applicant are under her management as she gives instructions for the Applicant. In Muganyizi's view, saying that what is contained in paragraph 3 in which she stated having instructed the legal officer is hearsay is bizarre. He contended that what is stated in paragraph 4 is a belief and not information. That paragraph 5 contains not an information but the record of the case to shows that on 23rd March, 2017 the matter was dismissed is as per the Court's record. He submitted that the contents of paragraph 7 as well concern the Court record. According to him court record need no proof from anywhere as they are apparent in the court file.

Mr. Muganyizi drew the attention of the court to the case of **The Registered Trustees of the Marian Faith Healing Center @Wanamaombi vs The Registered Trustees of catholic Church Sumbawanga Dioces at Dares salaam Court to Civil Appeal No. 64 of 2006, (Unreported) at page 6** in which reference was made to the decision by **Privy Council in Subramaniam v Public Prosecutor (1956) 1W.L.R. at page 970.**

According to Mr. Muganyizi, what is contained in paragraph 9 of the affidavit is the belief based on facts contained in respective paragraph. He submitted that beliefs are allowed in affidavits under order **XIX Rule 3 of the Civil Procedure Code** provided grounds are mentioned. Muganyizi

submits that the applicant mentioned grounds on which the facts are based.

I have gone through the affidavit. Surely as rightly submitted by Mr. Muganyizi, the deponent sworn that she was the principal officer of the Applicant. In my view her position qualifies her to swear on behalf of the applicant. The Applicant being an entity, needs its principal officer to take oath for its affairs as we don't expect to see the legal entity physically in court, rather it speaks through its principal officers. The paragraphs challenged by the respondent all talk about what is in court record and the deponent being the applicant's principal officer should be in a position to give that statement.

I have gone through the verification clause. It states which facts are in the knowledge of the applicant and which ones are in the beliefs. It states that:

*"I JOYCELINE KAIKA do verify that all that is stated under paragraphs 1,2,3,5,6,7 and 8 hereinabove is true to the best of my knowledge. What is stated in paragraphs 4 and 9 is based on the belief of facts contained in respective paragraphs".*

I don't see a defect in the verification clause.

Having seen no defect in the contents of the affidavit and in the verification clause, to contravene neither **Order XIX Rule 3(1) and (2) of the Civil**



**Procedure Code (Cap 33 R.E. 2002) nor Rule 74 (1) and 2 (d) of the High Court (Commercial Division) Rules, 2012 Government Notice No. 250 of 2012**, I hereby dismiss the preliminary objection for want of merit. Costs to follow the event.

Dated at Dar es Salaam this 30<sup>th</sup> Day of November 2021



A handwritten signature in blue ink, appearing to read "Katarina T. Revocati Mteule".

**KATARINA T. REVOCATI MTEULE**  
**JUDGE**