

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 39 OF 2022

(Arising from Commercial Case No. 132 of 2015)

BETWEEN

BARRETTO HAULIERS (T) LTD.....APPLICANT

VERSUS

TATA AFRICA HOLDINGS (TANZANIA).....RESPONDENT

Date of Last Hearing: 11/08/2022

Date of Ruling: 15/09/2022

RULING

MKEHA, J:

The applicant is moving the court for an order of extension of time within which to file Notice of Appeal against the decision of this court in Commercial Case No. 132 of 2015 dated 13/05/2016. The application is made under section 11(1) of the Appellate Jurisdiction Act as well as Rule 47 of the Court of Appeal Rules. It is supported by an affidavit of Mr. Richard Barreto, Principal Officer of the Applicant. Before the application

was listed for hearing, Mr. Luciu Peter learned advocate for the respondent raised a notice of preliminary objection to the following effect:

1. That, the affidavit in support of the application is incurably defective for containing law and legal arguments and
2. That, the affidavit in support of the application is incurably defective for containing a defective verification clause which does not disclose the source of information.

Submitting in support of the objections, the learned advocate for the respondent submitted that, the affidavit ought to contain facts and not law or legal arguments. He made reference to paragraph 6 of the affidavit that in his view contains extraneous matters and legal arguments. The learned advocate further submitted that, whereas paragraph 6 of the applicant`s affidavit contains legal arguments, the verification clause does not indicate source of information contained therein. The learned advocate pressed for striking out of the application.

Mr. Wawa learned advocate for the applicant submitted in reply that, what falls within the discretion of the court does not qualify to be a

point of preliminary objection. He moved the court to order an amendment in the event the objections are upheld. Mr. Eupaphrace Charles learned advocate for the applicant added that, the deponent was acquainted with what he verified, that being the reason for not disclosing source of information.

The issue is whether the objections are meritorious. The advocates for the applicant could not deny the fact that paragraph 6 (i) to (iv) of the applicant`s affidavit contains legal arguments. It is this paragraph that contains reasons in support of the application. By containing legal arguments, the paragraph offends one of the fundamental principles governing drafting of affidavits, that, an affidavit should not contain legal arguments. That being the case, paragraph 6 (i) to (iv) of the applicant`s affidavit is expunged.

The remaining paragraphs do not contain reasons for the delay. As such, they cannot support an application for extension of time within which to file a notice of appeal. Consequently, the application is struck out with costs for being incompetent.

DATED at DAR ES SALAAM this 15th day of SEPTEMBER 2022..




C. P. MKEHA

JUDGE

15/09/2022

Court: Ruling is delivered in the presence of the parties' advocates.




C. P. MKEHA

JUDGE

15/09/2022