

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT MWANZA**

**COMMERCIAL CASE NO. 5 OF 2022**

**BETWEEN**

**VICTOR NESTORY NDABAGOYE..... PLAINTIFF**

**Versus**

**SINDA GETEBA ..... DEFENDANT**

Date of Last Order: 21<sup>st</sup> October, 2022

Date of Ruling: 18<sup>th</sup> November, 2022

**RULING**

**MKEHA, J:**

The plaintiff instituted a suit against the defendant for payment of a total sum of TZS 106,658,300 for breach of transportation agreement between a driver on behalf of the Plaintiff and the Defendant. Upon being served with plaint, Mr. Chacha learned advocate for the defendant raised a preliminary point of objection to the effect that, the verification clause is incurably defective for containing a defective verification clause which

does not disclose source of information contrary to Order VI Rule 15 (1) of the Civil Procedure Code, Cap 33 R.E 2019.

Submitting in support of the objection, the learned advocate for the defendant submitted that, the verification clause does not show whether the information was within knowledge of the plaintiff or whether he obtained it from other source. The words "**their own knowledge**" have been used in the verification clause while the other persons have not been disclosed. According to the learned advocate's view, the purpose of disclosing the source of information is to satisfy the court that the plaintiff is acquitted with the facts of the case. Mr. Chacha learned advocate further submitted that, the overriding objective cannot be invoked in the circumstances of this case.

Mr. Obwana learned advocate for the plaintiff submitted in reply that, the word "**their**" was a mere typing error instead of the word "**his**". According to the learned advocate, even if it were an irregularity the same was curable. The learned advocate urged the court to be guided by article 107 of the Constitution of United Republic of Tanzania in avoiding technicalities as the defendant would not be prejudiced.

Mr. Chacha learned advocate rejoined that, the plaintiff conceded that, there was an error which he considered as a typing error. He pressed for striking out of the suit.

The issue is **whether the objection is meritorious**. The plaintiff does not deny the fact that verification clause in the plaint contains the words **"their own knowledge"** instead of the words **"my own knowledge"**. According to the learned advocate for the plaintiff the irregularity is curable.

I do agree with the learned advocate for the defendant that, the verifier must state whether the source of information is from his own knowledge or from another person's knowledge. In this suit the person appearing in the verification clause is Dr. Nestory Ndabagoye. However, the words which have been used to verify the information appear to be in plural, **(their own knowledge)**. That alone makes the verification clause to be defective. It is a settled legal position that, whether an averment is based on personal knowledge or not, the source of information should be clearly disclosed. The case of **UGANDA VS COMMISSIONER OF PRISONS EXAPARTE MATOVU [1966]1 EA 514** is an authority backing the said legal position.

However, much as I find merit in the objection, the defect is one of the defects that can be amended in view of achieving substantial justice. Therefore, while sustaining the objection, I will not proceed to strike out the suit as the learned advocate for the plaintiff would wish to see. Instead, I hereby order the plaintiff to make an amendment addressing the anomaly explained hereinabove. Fourteen (14) days' time is given for the plaintiff to achieve the said purpose. Costs to be in the main cause.

Dated at ~~NWANKA~~ this 18<sup>th</sup> day of November 2022.



  
**C.P MKEHA**

**JUDGE**

**18/11/2022**

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



  
**C.P MKEHA**

**JUDGE**

**18/11/2022**