

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

COMMERCIAL CASE NO. 125 OF 2023

BETWEEN

TOP TASTE SPARE PARTS COMPANY LIMITED PLAINTIFF

VERSUS

SUNSHINE TRANSPOTATION LIMITED DEFENDANT

RULING

Date of last order: 09/11/2023

Date of last ruling: 23/02/2024

AGATHO, J.:

This ruling was prompted by the PO raised by the Defendant. That the suit is not maintainable and incompetent before this court for having a defective verification clause in support of the plaint. This contravenes Order VI Rule 15 of the CPC [Cap 33 R.E. 2019].

Luckily, the Plaintiff has admitted that the plaint really contains the defective verification clause. But he used two points to defend herself.

One that the defect is not fatal and it is curable via the overriding objective principle. **Two**, that the verification of a set of facts includes the

subset facts as held in **William Benedictor v Platnum Credit Limited (Labour Revision No, 34 of 2019 [2020] TZHC 3384 (21 July 2020)**. That since the Plaintiff in the case at hand has verified paragraph 3 then that means she has verified sub paragraphs 3.1, 3.2, 3.3, 3.4 and 3.5. However, in my respective view such an approach is not the spirit of the CPC (Order VI Rule 15 (2)) which demands/requires each paragraph to be verified. I thus disassociate myself with the **Platnum Credit Limited's case**. I am holding so because it may happen that one subparagraph is based on the Plaintiff's own knowledge while the other subparagraph of the same paragraph is based on information given to him by another person. Therefore, the reliance on Venn diagram and sets formulae may be misleading for they do not apply in every circumstance.

Even the overriding objective cannot rescue the situation like the one at hand where the plaintiff has admitted that the verification clause is defective. Moreover, the overriding objective cannot be used blindly to disregard mandatory procedures set in the law and that go to the root of the matter. In **Paulo Francis Kilasara v Stanbic Bank Tanzania Ltd, Civil Application No. 80/01 of 2019 CAT at Dar es salaam** at page 13 the CAT held that the overriding objective cannot be used blindly. The CAT went further citing its decision in **Puma Energy Tanzania Limited v**

Roadways (T) Ltd, Civil Appeal No.3 of 2018 which held that the overriding objective was not designed to blindly disregard mandatory procedural requirements going to the root of the matter before the Court.

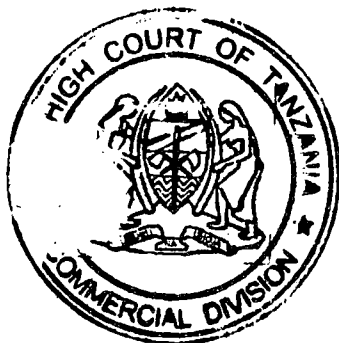
In the case at hand the plaintiff engaged an advocate who is a legal expert aware of the importance of the verification clause. He understands the verification clause is a mandatory requirement of the law. It is not a trivial matter that can easily be excused under the guise of overriding objective principle. To do so is to encourage laxity and contravention of the law.

For the foregoing reasons the PO is found to have substance. It is thus sustained.

Since the PO has merit, the suit struck out with costs.

Order accordingly.

DATED at DAR ES SALAAM this 23th Day of February 2024.



A handwritten signature in black ink, appearing to read "U. J. Agatho", with a horizontal line extending to the right.

U. J. AGATHO

JUDGE

23/02/2024

Date: 23/02/2024

Coram: Hon. U. J. Agatho, J


For the Plaintiff: Kaleb Mukama and Bona Shayo, Advocates

For the Defendant: Kaleb Mukama, advocate h/b Kay Mwesiga, Advocate

B/C: Mustafa

Court: Ruling delivered today, this 23th February 2024 in the presence of Kaleb Mukama and Bona Shayo, counsel for the Plaintiff, and Mr. Mukama also held brief of Kay Mwesiga, the Defendant's Counsel.



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U. J. AGATHO
JUDGE
23/02/2024