

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 135 OF 2020

EDGEPOINT COMPANY LIMITED..... PLAINTIFF

VERSUS

JULIUS PETER NKONYA.....DEFENDANT

RULING

OPIYO, J.

Before me is a preliminary objection on point of law that need determination by this court. The defendant through the services of Advocate Francis Makota has noted that the verification clause on the plaint is incurably defective. It was argued by the Counsel for the respondent, in his written submissions that the verification clause as it appears on the plaint offends the provisions of Order VI Rule 15 of the Civil Procedure Code, Cap 33 R.E 2019. It is mandatory as per the said provisions, for every pleading to be verified at the foot by the party or one of the parties in pleadings. Mr. Makota has submitted that, in this case the plaintiff is a legal person, therefore the name of the person verifying the pleadings as her the authorised officer should have appeared on the foot of the plaint. The rationale behind is simple, just to make it known to the parties as to the real source of information. To verify the plaint by using the words "the undersigned" who is described as the authorized officer without the name is unlawful and renders the

verification clause fatally defective. This was the position of court in **Econofinance Company (EFC) versus Anchor- Clearing and Fowarders and Another, Civil Application No. 54 of 2013, Court of Appeal of Tanzania at Dar Es Slaam**, which was quoted in the case of **Juma Ibrahim Mkoma and 2 Others versus Association of Tanzania Tobacco Traders, Misc. Application no. 04 of 2016, High Court of Tanzania, Labour Division at Tabora**. It was also held that, the lack of the name of the person who verified the information, the application becomes incompetent and the case should be struck out (see **ZTE Corporation versus Benson Informatics Limited T/A Smart, Commercial Case No. 188 of 2017, High Court of Tanzania at Dar Es Salaam.**)

Mr. James Everest, counsel for the plaintiff in his submissions admitted the verifying officer mistakenly forgot to indicate his name. But he was against the striking out of the suit as the mistake is not fatal, rather a curable one which do not render the plaint defective under Order VI Rule 17 of the Civil procedure Code Cap 33 R.E 2019. Mr. James insisted that, all the cases cited by the defendant's counsel in support of his arguments are distinguishable with the situation at hand, as they were concerned with verification clause of affidavits not plaints. However, Mr. James agreed that both the affidavit and plaint are pleadings, but they serve different purposes. He contended that, the ingredients of verification clause given under Order VI Rule 15(3) of the Civil procedure Code, Cap 33 R.E 2019, require a verifying person to sign and state the date and place, which have been done, thus, their plaint did comply with all that though there are mistakes which are not as fatal as viewed by the

defendant's counsel. He therefore prayed for the overruling of the preliminary objection.

In rejoinder, the plaintiff counsel maintained that, the rules of pleadings do not differ for complaints and other pleadings including affidavits. They are all the same. Therefore, in case of a defective verification clause whether in a complaint or affidavit, the outcome is the same, the suit or application becomes incompetent and ought to be struck out.

Having gone through the rivalry submissions from the counsels for both parties the issues for determination is whether the preliminary objection raised by the Learned counsel for the defendant is of merit. The defendant's counsel did capitalize on the fact that, the name of the verifier is missing on the verification clause and that makes the verification clause fatally defective as it is not known who is the source of information contained in the entire complaint. The counsel for the defendant relied in the Court of Appeal case of **Econofinance Company LTD(EFC), supra**. On the other hand, the plaintiffs' counsel admitted that the name was forgotten by mistake, but the said mistake is curable as the signature, date and place of the verifier has been included as per Order VI rule 15(3) *supra*. I will reproduce Order VI rule 15 as follows:-

15.-(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verified upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

The law on the above provisions has used the words "***the person verifying***" meaning thereby, that particular person should be known by his or her names. That is what was stated and emphasized in the **Econofinance Company LTD(EFC) case, supra**. It is therefore settled that for pleadings to be legally viable, the verification clause should be free from any defect. One of the defects is omitting the name of the verifier on the verification clause.

In the plaint at hand, the verification clause is fatally defective on the face of it, for lacking the specific name of the authorized officer who signed on it. This fact affects the whole plaint and renders the case incompetent, liable to be struck out as was done in **Econofinance Company LTD(EFC) case, supra**. I therefore find the preliminary objection to have merit and sustain it accordingly. No order as to costs.



A handwritten signature in blue ink, appearing to read "M.P. OPIYO", is written over a horizontal line.

M.P. OPIYO,

JUDGE

5/7/2021