

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

**MISC.LAND APPLICATION NO.345 OF 2021**

*(Originated from Land Appeal No. 79 of 2020)*

**FARIDA SALUM GANZER** (Administrator of

estate of Salim Said) .....**APPLICANT**

**VERSUS**

**ABDULSALAM AMEIR**.....**1<sup>ST</sup> RESPONDENT**

**S. A & SONS COMPANY LIMITED**.....**2<sup>ND</sup> RESPONDENT**

**RULING**

Date of last order: 10/9/2021

Date of Judgment: 24/9/2021

**T.N. MWENEGOHA, J:**

The applicant, FARIDA SALUM GANZER moved this court under section 47 (1) of the Land Disputes Court Act, Cap 216 R. E 2019 for the following order:

1. The honorable court be pleased to grant leave to the applicant to file an appeal against the respondent based on the points advanced in the affidavit.
2. Costs in the course.

The application is supported by the affidavit of the Jackson Liwewa, the applicant's advocate. Upon filing his counter affidavit, the respondent filed the notice of preliminary objection that,

- a. That the application is improper before the court for being supported by the affidavit with defective verification clause hence offends mandatory provisions of the law.

The application was ordered by my predecessor Judge Hon. Kalunde J. to be argued by way of written submission. As the presiding Judge was transferred to another working station, this application has been re assigned to me and upon perusal I find that the submissions are complete and therefore this ruling. In this court, the respondent was represented by Frank Kilian, Advocate while the applicant was represented by G.N Said, Advocate.

In his submission Mr. Kilian submitted that the affidavit in support of the chamber summons offends Order VI Rule 15 (2) of the Civil Procedure Code, cap 33 R. E 2019. He submitted that the verification clause of the applicant never specified by reference to the numbers as to which paragraphs are true according to his knowledge and which paragraphs are true based on information he received and believed to be true.

He added that even at paragraph 1 and 2 of the affidavit, the deponent does not state if he is conversant with the facts about which he deponed. He cited the case of **Kiganga and Associates Gold Mining Company Limited V Universal Gold, Commercial cause no. 24 of 2000 TLR 2002** at pg. 129 to that effect.

In reply Mr. Saidi submitted that he does not contest on this defect but he added that this is a minor error and does not vitiate or render the whole applicant's application incompetent. He invited this Court to apply the overriding objective principle to cure the defect.

Having gone through the submissions on the raised objection, it is clear that the defectiveness of verification clause has been conceded by the Mr. Saidi for the respondent. The records are also clear that in the verification clause the applicant never specified by reference to the numbers as to which paragraphs are true according to his knowledge and which paragraphs are true based on information he received and believed to be true contrary to Order VI Rule 15 (2) of the Civil Procedure Code, cap 33 R. E 2019.

The only question here is what is the effect of having affidavit with the defective verification clause. To Mr. Kilian he prayed for the entire affidavit be expunged from the Court's records, thus the entire application be struck out with costs. To Mr. Saidi he invited this Court to apply overriding objective principle to cure this defect, although he did not specifically state what the Court would do to cure it using the said principle.

I am aware that the principle of overriding objective requires Courts to deal with cases justly, speedily and to have regard to substantive justice as emphasized in various judicial decisions.

However, it is also emphasized that the "principle of overriding objective was not meant to absolve each and every blunder committed by parties in court proceedings. Had it been so, all the rules of procedure would be rendered nugatory." (Utamwa J. in **Erasto Kamala Mwambusye V Jubilee Insurance Co. Tz Ltd and Another, Civil Application No. 13 of 2020, High Court, Mbeya Registry**)

The Court of Appeal in **Mondorosi Village Council and 2 others V Tanzania Breweries Limited and 4 others, Civil Appeal No. 66 of 2017, CAT at Arusha (unreported)** were also of the view that



overriding objective principle cannot be applied blindly against mandatory provisions of procedural law which goes to the foundation of the case.

I also wish to note hereby a Court of Appeal decision in the case of **Samwel Kimaro V. Hidaya Didas, Civil Application No.20 of 2012** where the Court of Appeal held that "...Any pleading with defective verification clause, is bad in law and the consequence of which is to strike it out."

I am therefore guided by the Court of Appeal cases above and am of the view that the defect in the case at hand is not a minor defect as is played off by the applicant. The overriding objective principle cannot be applied against the enabling provision of the law and thus I join hand with Mr. Kilian that the whole application is defective and thus it is here by struck out for such reasons with costs.

**Dated at Dar es salaam this 24<sup>th</sup> day of September, 2021**



  
**T.N. MWENEGOHA**  
**JUDGE**