

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND REVISION NO. 56 OF 2020

VICTORIA RWEIKIZA.....APPLICANT

VERSUS

ALEX MSAMA MWITA.....1st RESPONDENT

BENEDICTO R. IJUMBA.....2nd RESPONDENT

NOELA O. ISHEBEBE.....3rd RESPONDENT

JUDGMENT

02/12/2021 & 14/12/2021

Masoud, J.

There was an application before me for revision. It was made under section 43(1)(b) of the Land Disputes' Courts Act, Cap. 216 R.E 2016. The application was essentially supported by an affidavit of the applicant, namely, Victoria Rweikiza, who purportedly sworn the affidavit supporting the application at Dar es Salaam whilst also revealing her Dar es Salaam postal address and while also indicating that she resides in Norway and was only in Dar es Salaam between December 2018 and January 2019.

The application was also accompanied by an affidavit of Mr Pascal Mshanga, learned counsel, representing the applicant in the present

application. The affidavit of the said Mr Pascal Mshanga also indicated that the applicant was not living in Tanzania as the learned counsel shown that *"....on Saturday February, 2019 the applicant called"* him by phone from Norway and instructed him in relation to the disputed property described as Plot No. 750, Block J, Mbezi Beach, Kinondoni, Dar es salaam.

When the matter came up for hearing preliminary issues were raised by Mr. Andrew Kanyonyole and Mr. Denis Julius Advocate for the first and second Respondents as to the competence of the affidavit of the applicant. I was shown that the affidavit of the applicant was purportedly sworn by the applicant, one, **Victoria Rweikiza**, while the same affidavit was also purportedly verified by one, **Neema Rweikiza**, who is neither an applicant nor a party to this application.

I was in a nutshell told that the anomaly makes the application incompetent and the only remedy is to have the application struck out, and if the applicant wishes should thereafter bring a competent application. To bolster the argument made, I was told that the error meant that the statements in the purported affidavit are not the statements of Victoria Rweikiza, the applicant.

In reply, I was told by Mr. Pascal Mshanga that indeed the point raised is apparent on the affidavit of the applicant. There was thus an admission. However, it was argued that the error is curable by amendment. I was referred to unreported decisions of the Court of Appeal which were however not supplied. I was told that such decisions point to the position that the court may order amendment of an affidavit with a defective verification in exercise of its discretion which discretion must be exercised judiciously. Upon being asked by the court the circumstances under which such were determined the authorities, Mr Mshanga had it that the authorities had to do with wrong numbering of paragraphs of the affidavit. No doubt that the authorities were not addressing situations that I am facing in this case. If I go by the submissions of Mr.Mshanga.

Nonetheless, Mr Mshanga urged the court that the principle in the authorities necessarily applies. In addition, I was told that since the court was not told how the respondents would be prejudiced if an amendment is orderd to rectify the anomaly, the court should proceed to order for the same. I was further told that the application is nonetheless competent as it is also supported by another affidavit of the applicant's counsel though I was not told that such affidavit had in any way clarified the anomaly. Section 43(1)(b) of the Land Disputes Courts Act (supra) was also relied

on as one that may very well allow the application to proceed on its merit notwithstanding defects in its supporting affidavit.

In rejoinder, counsel for the first and second respondents, generally, reiterated their earlier submissions. They insisted that the authorities relied on by the applicant's counsel was given the way it was described by the counsel for the applicant, not relevant to the circumstances to the present matter in which one who sought to swear an affidavit for the present application is not the same person who verified the affidavit supporting the application. They also said that allowing amendment in this application is tantamount to replacing the affidavit, for there is nothing to be cured by way of amendment. The court was also asked to remember and consider that the defects in the present application involved an affidavit which is governed by Order 19, rule 3 of the Civil Procedure Code, cap. 33 R.E 2019, and further underlined that the applicant's counsel has admitted that the affidavit is in fact defective.

On my part, having examined the record, and considered the rival submissions, it is clear that there is an undisputed serious anomaly in the affidavit of the applicant, in that the name of one who purports to have

verified the affidavit is not the same as the name of the applicant who purports to have deponed the affidavit. The applicant's counsel has undoubtedly conceded. However, he is of the view that the error is curable by an amendment and the fact that the application is accompanied by an affidavit of the applicant's counsel.

In my considered view the application is just one application notwithstanding that it is supported by the applicant's affidavit which is again accompanied by the affidavit of the applicant. Thus, the chamber summons reads thus; the application ".....has been taken at the instance of the applicant and it is supported by the affidavit of Victoria Rweikiza and Pascal Livin Mshanga sworn on 17/12/2020."

In the above respect, the defects of the affidavit of the applicant would necessarily affect the whole application. I am accordingly mindful of paragraph 8 of the purported affidavit of the applicant referring to the other affidavit accompanying the applicant's affidavit. I was equally not convinced that the principle in the authorities relied on squarely applies to the present matter given that as presented by the counsel for the applicant, the circumstances in the authorities appear to be not the same

as is in the present application. Again, I was not told and not shown that the other affidavit has in any way addressed and corrected the anomaly.

In the result, and for the above reasons, I think the proper remedy in the circumstances is to strike out the application. If the applicant wishes, he may refile the application upon addressing the anomaly. With this outcome, I need not deal with the application in and on its merits. Considering the circumstances, I will not make any order as to costs.

Dated and delivered at Dar es salaam this 14th day of December 2021


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B.S. Masoud
Judge

