

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC.LAND APPLICATION NO.01/2022**

(Arising from the decision of the District Land and Housing Tribunal for Kinondoni in

Misc. Application No. 228 of 2020)

**SHAIBU MAMU.....1<sup>ST</sup> APPLICANT**

**OMARI MAMU.....2<sup>ND</sup> APPLICANT**

**JOSEPH PILOT.....3<sup>RD</sup> APPLICANT**

**PETER MUSHI.....4<sup>th</sup> APPLICANT**

**SHABANI HAMIR.....5<sup>TH</sup> APPLICANT**

**SHAIBU RAIS MAMU**

(As a legal representative of Hawani Rais Mamu).....6<sup>TH</sup> APPLICANT

**Vs**

**LUSIZI RASHID.....RESPONDENT**

**RULING**

*15.09.2022 & 19.10.2022*

**Masoud, J;**

The applicant filed this application under the provision of Order 8 (1)(2) of the Advocate Remuneration Order, 2015, GN. No. 264 (herein after the Remuneration Order) seeking for extension of time within which to file reference against the ruling and orders issued in Misc. Application No.228 of 2020, dated 9/11/2021 and costs of the application. This application has its roots from the decision of the District Land and Housing Tribunal

(trial tribunal) in Misc. Application No. 560 of 2018 (application for costs), filed by the applicants herein against the respondent. The respondent herein, successfully raised two preliminary objections, henceforth, the application was dismissed with costs. Thus, the respondent herein successfully filed the Misc. Application No. 228 of 2020 claiming for costs he incurred when prosecuting the said preliminary objections. Aggrieved by the decision in the application No.228 of 2020, the applicants decided to file the application at hand.

The application at hand, is accompanied by the affidavit sworn Ms Leah Linus Kamanga, the applicant's Advocate. On the other hand, the respondent filed his counter affidavit opposing the application. The respondent on 08/04/2022 raised two preliminary objections that.

- 1. The Applicant's purported application for extension of time to file Reference for ruling and orders against the whole decision of the trial Tribunal (Hon. C.P. Kamugisha, Chairman) in Misc. Application No. 689 of 2020 dated 9/11/2021 is incurably defective for being supported by an Affidavit sworn by an incompetent person.*
- 2. That the Applicant's purported affidavit besides being sworn by*

*an incompetent person, is incurably defective in law as it bears a defective verification clause contrary to Order XIX Rule 3(1) of the Civil Procedure Code Cap 33 R.E 2019.*

The matter proceeded by way of filing written submission, and the parties adhered to the submission schedule. Both parties were represented, as earlier submitted, the applicant's enjoyed the service of Ms. Leah Linus Kamanga, Advocate, and the respondent enjoyed the service of Mr. Bernard Mbakileki, Advocate.

The hearing of the preliminary objection and the main application was held simultaneously. Submitting in support of the 1<sup>st</sup> and 2<sup>nd</sup> preliminary objections, Mr. Mbakileki submitted that Order XIX R.3(1) of the Civil Procedure Code, Cap 33 R.E 2019, (The C.P.C.) requires an affidavit supporting an application to be sworn by the applicant and not by his advocate.

On the above argument, reliance was made on **M/S Consortium of Les Genes (Pty) & Oberoi (Pty) Ltd vs. Medical Store Department and Another**, Misc. Civil Application No.53 of 2019, HC (Main Registry) at DSM (unreported) where the court cited the case of **Lalago Cotton Ginnery and Oil Mills Co. Ltd vs The Loans and Advances**

**Realization Trust (LART), Civil Application No. 80 of 2002, (unreported)** and stated that;

*"An advocate can swear and file an affidavit in proceeding which he appears for his client, but on matters which are in the advocate's personal knowledge only. For example, he can swear an affidavit to state that he appeared earlier in the proceedings for his client and that he personally knew what transpired during those proceedings."*

Mr. Mbakileki added that what has been deponed under paragraphs 5 and 6 contained information not in the personal knowledge of the advocate, and that are argumentative.

He said further that the defect in the applicant's affidavit cannot be cured by the invocation of the overriding objective principle, as the principle cannot be applied on the mandatory provision of the law.

Ms Leah submitted in reply that the preliminary objections are improperly raised to delay justice as there is no pure point of law. She referred the court to the famous case of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors LTD** (1969) E.A 696.

Ms Leah submitted further that she was right to swear an affidavit on behalf of her clients because she had knowledge of the facts intended to be challenged by way of reference. Ms Leah added that she was the one who represented the applicants in the Application No. 228 of 2020 (for bill

of costs), was the one who made the follow ups concerning the certified copies of the ruling and order. She was as such conversant with what she deponed in the said affidavit.

She referred the court to the case of **Tanzania Breweries Limited vs Herman Bildad Minja**, Civil Application No. 11/18 of 2019, where the Court of Appeal cited with approval the case of **Lalago Cotton Ginnery and Oil Mills Co. Ltd** (supra). In the said case, the Court made it clear that an advocate who swears an affidavit on behalf of the client must have personal knowledge of what transpired during proceedings.

On her part, she argued, as an advocate of the applicants, she has personal knowledge because she is the one who attended the hearing of the application for the Bill of Costs No. 228/2020 on behalf of her clients.

Having gone through parties' submission and the records of the application, my duty is to determine whether the application at hand has merits.

Order XIX R.3 (1) of the Civil Procedure Code, provides that;

*"Affidavits shall be confined to such facts as **the deponent is able of his own knowledge to prove**, except on interlocutory applications on which statements of his belief may be admitted" (emphasize applied).*

According to the above cited provision, the law does not prohibit advocates from swearing affidavits on behalf of their clients, as long as the advocate has the personal knowledge of the facts deponed. It was not disputed that Ms Leah was the one who represented the applicants in the previous application for Bill of costs before the trial Tribunal. She was therefore conversant with what transpired during the proceedings. Indeed, she has the personal knowledge of what she deponed on.

Thus, the case of **M/S Consortium of Les Genes (Pty) & Oberoi (Pty) Ltd** (supra) is distinguishable from the application at hand as in that the cited case the advocate who swore the applicant's affidavit was not the one who represented the applicant in the previous case, and he did not disclose the source of the information he deponed on.

On the basis of the above findings, the preliminary objections raised lacked substance and the same are dismissed.

In so far as the merit of the application is concerned, it was Ms Leah's argument that the decision to be challenged by reference was entered on the 09/11/2021. The record revealed that the same was ready for collection on the 10/12/2021 after a lapse of 31 days. Ms Leah submitted further that the applicants collected the same from the tribunal on

15/12/2021, and promptly filed the application at hand on 03/01/2022, that is within 19 days.

Mr. Mbakileki submitted in reply that the applicant has failed to adduce sufficient reasons for the time to be extended. The applicant delayed for 56 days. The said period of delay is reckoned from the date of the delivery of the ruling which is on 09/11/2021 to the date on which they filed this application which is on 03/01/2022. He accordingly argued that the 56 days are not accounted for by the applicants in the affidavit supporting the application. According to Order 7(2) of the Remuneration Order (supra), the application for reference is to be filed within 21 days from the date of the decision.

My perusal of the records of this application left me in no doubt that the impugned decision was delivered on 09/11/2021, and copies thereof were ready for collection on 10/12/2021, after a lapse of 31 days. It is the applicant's argument, which argument which was not contested by the respondent, that she collected the said copies on 15/12/2021 and managed to file the application at hand on 03/01/2022.

It thus means that the instant application was filed after 54 days counting from the date on which the ruling was delivered. In this application there

is no proof that the applicant wrote a letter to the tribunal requesting for copies of judgment, proceedings and decree in vain.

Things would have been different had there been a letter requesting for the above-mentioned copies. Therefore, the fact that the applicant received the certified copies on 15/12/2021, and filed this application on 3/01/2022 after a lapse of 19 days does not add any value to the applicant's application

In the upshot, I am satisfied that the application is not meritorious. It is thus dismissed with costs. It is ordered accordingly.

Dated at Dar es salaam this 19<sup>th</sup> October 2022.

  
**B.S. MASOUD  
JUDGE**

