

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND APPLICATION NO.2 OF 2022

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

Misc. Application No. 689 of 2020)

SHAIBU RAIS MAMU.....1ST APPLICANT

OMARI RAIS MAMU.....2ND APPLICANT

JOSEPH PILOT.....3RD APPLICANT

PETER MUSHI.....4TH APPLICANT

SHABAN HAMIR.....5TH APPLICANT

SHAIBU MAMU

(As Legal representative of

Hawamu Rais Mamu)6TH APPLICANT

VERSUS

LUSIZI RASHID.....RESPONDENT

RULING

04.08.2022 & 19.10.2022

Masoud, J;

The applicants filed this application under the provision of Order 8 (1)(2) of the Advocates Remuneration Order of 2015, GN. No. 264 (hereinafter the Remuneration Order) seeking for extension of time within which to file reference against the ruling and orders issued in Misc. Application No.689 of 2020, dated 09/11/2021.

The application has its roots from the decision of the District Land

and Housing Tribunal of Kinondoni (trial tribunal) in Land Application No. 169 of 2014, filed by the respondent herein. The application was on 13/08/2018 dismissed for want of prosecution. On the same day of the dismissal, the respondent herein (the applicant before the trial Tribunal) filed an Application No. 516 of 2018 to restore the dismissed application.

The applicants herein unsuccessfully raised a preliminary objection that the application to restore the dismissed application (the Misc. Application No.169/2014) was time barred. As a result, the respondent herein, successfully filed an Application No.689 of 2020 for costs incurred when defending the said preliminary objection before the trial Tribunal. The Applicants herein were aggrieved by the said decision, henceforth, filed the application at hand.

The application at hand, is accompanied by the affidavit sworn by Ms Leah Linus Kamanga, the applicants' Advocate. On the other hand, the respondent filed his counter affidavit opposing the application.

The respondent on 05/04/2022 raised two preliminary objections that:

"(a)...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;

(b)that the Applicant's purported affidavit besides being sworn by an incompetent person, it 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."

On 04/08/2022 the court ordered the matter to proceed by way of filing written submissions, and the parties adhered to the submissions filing schedule.

Both parties were represented, as earlier submitted. While the applicant's enjoyed the service of Ms. Leah Linus Kamanga, Advocate, the respondent enjoyed the service of Mr. Bernard Mbakileki, Advocate. The hearing of the preliminary objection, and the main application was ordered to proceed concurrently.

Firstly, I am going to deal with the preliminary objections raised, if need still be, I will proceed determining the main application.

Submitting in support of the 1st and 2nd preliminary objections, Mr. Mbakileki stated that, according to the provision of Order XIX R.3(1) of the Civil Procedure Code, Cap 33 R.E 2019, (The C.P.C.) the law requires the affidavit in support of the application to be sworn by the applicants themselves and not by their advocate.

To support his argument, Mr Mbakileki referred the court to the case of **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 on under paragraphs 5 and 6 contained information not in the personal knowledge of the advocate, and that the same are argumentative. He said further that the defect in the applicant's affidavit can not 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 stated 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. 689 of 2020 (for bill of costs). She was the one who made the follow-ups on the certified copies of the ruling and order. She was therefore conversant with what she deponed on 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), and the court went further to hold that an advocate who swears an affidavit on behalf of his client must have personal knowledge of what transpired during the proceedings. As the advocate of the applicants, she has the personal knowledge because she is the one who attended the hearing of the application for the bill of costs No. 689 of 2020 on behalf of her clients.

Having gone through parties' submissions and the records of the application, the main issue for determination is whether the application at is meritorious. Order XIX R.3 (1) of the C.P.C 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 an advocate from swearing an affidavit on behalf of his client, as long as he has a personal knowledge on the facts deponed. Ms Leah was the one who represented the applicants in the previous application for Bill of costs before the trial tribunal. She is therefore conversant with what transpired during the proceedings. Indeed, she has personal knowledge of what she deponed on.

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

On the basis of the above findings, I find the preliminary objections raised to lack substance, therefore, overruled. I will now proceed determining the merits of the main Application.

In so far as the merits of the application is concerned, it was Ms Leah's argument that the decision to be challenged by reference was entered on 09/11/2021, and the same were ready for collection on 10/12/2021 after a lapse of 31 days. She 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, within 19 days.

Mr. Mbakileki submitted in reply that the applicant failed to adduce sufficient reasons to warrant the court grant the extension of time sought. The applicant delayed for 56 days if one were to reckon from the date of the ruling up to the date the instant application was filed. The said delay of 56 days was according to Mr Mbakileki not accounted for. I was told that 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 reveals that the impugned decision was delivered on 09/11/2021, certified copies were ready for collection on 10/12/2021 after a lapse of 31 days. It is the

applicant's argument that the argument which was not contested by the respondent, she collected the said copies on 15/12/2021 and managed to file the application at hand on 03/01/2022.

The foregoing means that counting from the date of the impugned decision to the date the current application was filed, it is clear that 54 days lapsed. Indeed, this period of 54 days is not accounted for. In the record of this application, there is no proof that the applicant wrote a letter to the tribunal requesting for copies of judgment, proceedings and decree.

Things would have been different in case there was a letter requesting for the above-mentioned copies, as applicants would have invoked the provision of **Section 19(2) of the Law of Limitation**, Cap 89 R.E 2019 (The Limitation Act) to exclude the period of time necessary for obtaining those copies.

The fact that the applicant received the certified copies on 15/12/2021 and filed this application on 3/01/2022 after the Lapse of 19 days, does not add any value to the applicant's application, since section 19(2) of the Limitation Act, only apply if the applicant made a written request for the supply of the requisite copies for the purpose of filing

reference. See **Valerie McGivern vs Salim Farkrudin Balal, Civil Appeal No. 386 of 2019, CAT at Tanga** (Unreported).

In the upshot of the above findings, the application is without merit and it is dismissed with costs. It is so ordered.

Dated at Dar es salaam this 19th day of October 2022.


B.S. Masoud
Judge

