

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 531 OF 2022

ABUBAKARI ZUBERI.....1ST APPLICANT
ARABI SHAIBU.....2ND APPLICANT
ATHUMANI MOHAMED MTAHUKA.....3RD APPLICANT
DEO BRUSHI.....4TH APPLICANT
JANUARY KAGOSHA RENATUSI.....5TH APPLICANT
JOBLESS SADICK SAGARA.....6TH APPLICANT
JUMANNE NASORO CHUMA.....7TH APPLICANT
KHALIDI JUMA MSHIMBE.....8TH APPLICANT
RIZIKI RASHIDI.....9TH APPLICANT
SAIDI SALUMU.....10TH APPLICANT
SALUMU MOHAMED MTAKA.....11TH APPLICANT
SEBASTIAN MICHAEL MAGUTA.....12TH APPLICANT
VEDASTO EVARIST NGARABA.....13TH APPLICANT
VERLUS JOHN MVEDA.....14TH APPLICANT

VERSUS

ASHURA MOHAMED SENG'ONDO.....1ST RESPONDENT
RALHAEL MROPE.....2ND RESPONDENT
HASSAN SAID.....3RD RESPONDENT
WEMA ISSA.....4TH RESPONDENT

Alis

HAMIS MZEE5TH RESPONDENT

SALUM IDD.....6TH RESPONDENT

R. Y. SWAI T/A KISHE AUCTION MART

LIMITED AND COURT BROKER.....7TH RESPONDENT

Date of last order: 3/11/2022

Date of ruling: 24/11/2022

RULING

A.MSAFIRI, J.

This is a ruling on preliminary objection raised by the 1st respondent against the competence of the affidavits sworn/affirmed by the 3rd, 5th, 6th, 7th, 8th and 11th applicants to the effect that;

The affidavits are defective contrary to Section 8 of the Notary Public and Commissioners for Oaths Act Cap 12 R.E 2019 and Section 10 and Schedule to Section 10 of Oaths Statutory Declaration Act CAP 34 R.E 2019.

The applicants had the services of Mr. Hassan Kilule learned advocate where the 1st and 7th respondents had the services of Mr. Aron Lesindamu learned advocate. On the other hand the 2nd-6th respondents were absent.

I ordered the objection to be disposed of by way of written submissions. *Alls*

Submitting on the above preliminary objection Mr. Lesindamu contended that the affidavits of the 3rd and 5th applicants offend Section 10 and Schedule to Section 10 of the Oath Statutory Declaration Act [CAP 34 RE 2019] (the Act). Mr. Lesindamu submitted that according to Section 10 of the Act, there is a format on which jurat of attestation must appear and which has to be complied with. Some the elements to be included on the jurat of attestation are; the name of the person who identified the deponent to the commissioner of the oath, deponent has to sign, date of material time in which oath was taken. Mr. Lesindamu contended that the affidavits by the 3rd and 5th applicants have not complied with such requirements.

Submitting further, Mr. Lesindamu stated that the affidavit by 6th applicant is defective for being signed by the stranger to the application and there is no affidavit to authorize such signing on behalf of the 6th applicant.

The affidavit by 7th applicant is defective as verification clause was not signed and the jurat has not been signed and dated which contravenes Section 8 of the Act. On the other hand the affidavit of the 8th applicant is

Alls.

defective as the jurat has no name of the person who identified the deponent to the commissioner of oath and similarly it is not dated as well.

Mr. Lesindamu contended that the affidavit by the 11th applicant is defective as the jurat lacks the signature of the deponent. The learned advocate summed up his submission contending that as the affidavits by the 3rd, 5th, 6th, 7th and 8th applicants are defective, the application is also rendered incompetent since Order XLIII Rule (2) of the Civil Procedure Code [CAP R.E 2019] (the CPC), requires every application be accompanied by affidavit. The learned advocate contended that as the application at hand is accompanied by defective affidavits the same should be dismissed with costs.

On reply Mr. Kilule contended that the errors if any, are curable and therefore the Court should ignore them and proceed with determination of the application. To fortify his stance Mr. Kilule referred to me several decisions, **Godrej Consumer Products Limited v Target International (T) Limited**, Misc. Commercial Application No. 54 of 2019 **Jamal S. Mkumba and another v Attorney General**, Civil Application No. 240/01 of 2019 Court of Appeal of Tanzania (both unreported). In the

Atts.

latter decision the Court ordered amendment of an affidavit to accord the applicant to insert proper verification clause.

Hence Mr. Kilule contended that as in the case cited above the Court allowed the applicant to amend the affidavit the same remedy should be availed to the respective applicants to amend their respective affidavits so as to serve the ends of justice.

Mr. Lesindamu did not file any rejoinder to counter the applicants' reply submission.

Having gone through the parties' submissions rival and in support of the preliminary objection raised, I have had a chance of thoroughly going through each of the complained affidavit as well. I had two issues to resolve; first whether there were any defects on affidavits as complained by Mr. Lesindamu and second; if the answer is in affirmative whether there was any failure of justice occasioned to the 1st respondent as a result of the complained defects.

I will start with the 3rd applicant's affidavit in which Mr. Lesindamu stated that the said affidavit offended the requirement of section 10 of the Act which requires jurat of attestation to disclose the name of the person

Alls.

who identified the deponent to the commissioner for oaths, the date and material time in which the oath was administered. The affidavit of the 3rd applicant clearly indicates where the affirmation was taken namely Dar es Salaam, it also indicates that the deponent (Athuman Mohamed Mtahuka) was identified to the commissioner of oaths by one Hassan A. Kilule. I am of the settled mind that the affidavit of the 3rd applicant has not offended Section 10 of the Act.

Regarding the affidavit by 6th applicant which Mr. Lesindamu contended that it has been signed by a stranger to the application and no affidavit authorizing such signing on behalf of the 6th applicant, I am unable to agree with the learned advocate because it is clearly indicated that the affidavit has been signed by 6th applicant. Mr. Lesindamu could not disclose the name of that stranger who signed the affidavit on behalf of 6th stranger.

Regarding the affidavit of the 8th applicant, which has been faulted for lacking the name of the person who identified the deponent (8th applicant) to the commissioner for oath, I am also of the view that the claim lacks basis as it is clearly indicated that the 8th applicant was introduced to the commissioner of oaths by Hassan A. Kilule.

Aelle.

On the other hand the affidavits of 5th and 11th applicants are being faulted for lack of signature of the deponents on the jurat of attestation. I have visited the purported affidavits truly there is no signature by the deponents namely the 5th and 11th applicants but it is indicated that oath was administered to both the deponents. Mr. Lesindamu contended such omission offends mandatory requirement of Section 10 of the Act.

The provision of Section 10 of the Act states the manner in which the statutory declaration is to be made. Its format has been provided under the Schedule to the Act. In the matter at hand what is being complained against is an affidavit and not a statutory declaration. I am of the settled view that an affidavit and statutory declaration are two different aspects. After all the Act does not apply to affidavits. In the case of **Margovind Savani v Juthalal Velji Ltd** (1969) HCD 278 this Court observed;

"It was definitely a mistake to draw and swear an affidavit as a statutory declaration. I do not think that the Oaths (Judicial Proceedings) and Statutory Declarations Act is meant to apply to affidavits despite the fact that there is no Tanzanian Ordinance or Act governing the procedure of drawing and swearing affidavits. Both

Alles.

affidavits and statutory declarations are written statements solemnly made on oath as true facts on the knowledge, information and belief of the deponent or declaring. In affidavits one must distinguish facts that are true to his knowledge from those that he thinks or believes are true to his information and belief and in the later group of facts he must also disclose the sources of his information as well as his grounds of belief. This however, is not an essential requirement of a statutory declaration”.

Now from the foregoing authority, the law referred to me by Mr. Lesindamu is inapplicable to affidavit at hand. In most cases, Order XIX of the CPC gives a few aspects on what an affidavit should contain. There is no express requirement for the deponent to sign the affidavit. Appending of signature on the affidavit has been developed from practice. While I acknowledge that it is necessary for there to be a signature of the deponent for now I will not dismiss the application as prayed for by Mr. Lesindamu merely for lack of signature unless there is a dispute whether the 5th and 11th applicants made the purported affidavits.

Alle.

I further hold that there is no any injustice caused to the 1st respondent as he was able to respond to the substantive issues contained in the said affidavits hence lack of signature did not go to the root of the matter.

It is for the foregoing reasons I hold that the preliminary objection raised by the 1st respondent lacks merits and it is hereby overruled with costs.

It is so ordered.



**A. MSAFIRI,
JUDGE**

24/11/2022