

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

MISC. LAND CASE APPLICATION NO.640 OF 2022

BENEDICT ALECK CHUSSI.....1ST APPLICANT

PAUL ALOYCE SWAI.....2ND APPLICANT

VERSUS

MOHAMED NASSORO RASHID.....1ST RESPONDENT

KINGAZI HASSAN KIGANZI.....2ND RESPONDENT

FOSTERS AND COMPANY LIMITED.....3RD RESPONDENT

R U L I N G

Date of Last Order: 17. 10.2022

Date of Ruling: 14.11.2022

T. N. MWENEGOHA, J.

This is an application for injunction, made under Order XXXVII Rule 1(a) of the Civil Procedure Code, Cap 33 R. E. 2019. The applicants have prayed among others, a restraining order against the 1st and 2nd respondents, to stop them from demolishing the applicants building found in the suit land, located at Viwege Majohe, Chanika Area, within Dar es Salaam Region, until the final determination of the Land Case No. 306 of 2022. The same was accompanied by the affidavit, sworn by both applicants.

The 1st respondent on his part has two preliminary objections against the application as follows; -

1. The affidavit is defective.
2. The affidavit cannot support the application.

His learned counsel, Hassan Chande, arguing through written submissions on the 1st objection was of the view that, the verification clause of the affidavit is fatally defective. The deponents have verified the information in some paragraphs to be from their own knowledge while in reality they are not. The same are from others sources, coming from the Court records and information supplied by their advocates. He insisted that the contents of paragraphs 2,3,4,5,6,7,8,9 and 10 are from the Court records and paragraph 14 and 15 contain an advice from the applicants' advocate.

On the 2nd objection it was argued that, the jurat of attestation is defective for not containing the date on which the commissioner for oaths attested the affidavit as provided for under section 8 of the Notaries Public and Commissioner for Oaths Act, Cap 12 R. E. 2019. Therefore, the whole affidavit is defective as it is against Order XIX Rule 3 of the Civil Procedure Code, Cap 33 R. E. 2019.

In reply of the 1st objection the applicant maintained that the contents of paragraphs 2,3,4,5,6,7,8,9 and 10 are information from the Courts and Tribunal. However, the same can be accessed by any person as they are for public consumption. Hence, they are well known to the applicants and the provisions of Order XIX Rule 3 of the Civil Procedure Code, Cap 33 R. E. 2019 was complied with. That, the 1st objection by its nature is on factual issue and not a point of law as stated in **Mukisa Biscuits**

Manufacturing Co. Ltd vs. West End Distributors Ltd, (1969) EA 696.

Regarding the 2nd objection, the applicants insisted that the date is there which is 04th October, 2022 and the jurat has the signatures of both applicants. Therefore, the 2nd objection is baseless too.

In his brief rejoinder, the counsel for the 1st respondent maintained that, the jurat of attestation in the applicants' affidavit is defective. It doesn't show where the oath was taken. The rules are now settled in a number of authorities, including the case of **The Registered Trustees of Joy in the Harvest versus Hamza Sungura, Civil Application No. 3 of 2003 (unreported)**.

I have gone through the submissions of both counsels on behalf of the parties. The question for determination is whether the objections have merits of not. To start with the 1st objection, I will not take much of my time on it. The same is purely based on factual matters that attracts arguments and evidence to ascertain its existence or no existence. In other words, the 1st objection offends the rules given in Mukisa Biscuits Manufacturing Co. Ltd (supra) and this Court cannot allow it. The 1st objection is overruled.

The 2nd objection is answered by looking into the provisions of section 8 of the Notaries Public and Commissioner for Oaths Act, Cap 12 R. E. 2019. For easy reference, I will reproduce it as here under:-

"8. Every notary public and commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall insert his name and state truly in the jurat

of attestation at what place and on what date the oath or affidavit is taken or made”.

The 1st respondent on the 2nd objection has claimed the jurat of attestation in the impugned affidavit is defective on two grounds. Firstly, it does not have the date showing as to when the oath was taken. However, upon careful examination of the said affidavit, I found the jurat to have been dated 10th October, 2022. That means the deponents appeared before the commissioner of oaths for such purposes on the date mentioned in the jurat of attestation. Therefore, the first ground lacks merits.

The second reason given by the 1st respondent when faulting the jurat of attestation is the fact that the same does not show the place where the oath was taken. On this part, I agree with the 1st respondent’s counsel. There is no part of the jurat showing the place where such oath was taken by the deponents. That being the case, I find the jurat of attestation in the affidavit at hand to be offending the provisions of Section 8 of the Notaries Public and Commissioner for Oaths Act (supra) makes the 2nd objection to be of merits and I hereby sustain it. The affidavit is found to be incurably defective, incapable of supporting an application.

Eventually, the application is struck out with costs.

It is so ordered.




T. N. MWENEGOHA

JUDGE

14/11/2022