

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 224 OF 2022

MWASILI JUMA RAMADHANI.....APPLICANT

VERSUS

LUFINGO MWAIPOPO TENDELA.....RESPONDENT

Date of last order: 17/5/2022

Date of ruling: 26/7/2022

RULING

A.MSAFIRI, J.

This is a ruling on preliminary objection raised by the respondent to the effect that;

- 1. The application before this Court is incompetent for it is supported by an affidavit whose verification clause contravenes the provision of section 2 of the Advocate Act, Cap 341 R.E 2019.*

When this matter was called on for hearing of the preliminary objection, Mbwana Ally Chipaso and Mkwikwini Robert learned advocates *ALLs*.

appeared for the applicant and respondent respectively. The matter was disposed of orally.

Mr. Mkwikwini advocate for the respondent contended that the application is incompetent before the Court as it has been supported by a defective verification as per the provisions of section 2 of the Advocates CAP 341 R.E 2019 (the Act). According to the learned advocate, the said provision defines who is an advocate.

The argument by the learned advocate for the respondent is that, Mwasili Juma Ramadhani, the applicant herein purporting to have verified the affidavit in support of the application as an advocate is not indeed an advocate. The learned advocate for the respondent submitted further that he checked on the website of E-wakili, and he could not find the name of Mwasili Juma Ramadhani in the Roll of advocates.

According to Mr. Mkwikwini, the fact that the applicant has verified the affidavit as an advocate while she is not an advocate renders the application incompetent.

On reply, Mr. Chipaso readily conceded that the inclusion of the word advocate on the verification clause was a mere typing error and does not *Act.*

go to the root of the matter. To fortify his point, Mr. Chipaso cited the decision of **Leila Jalaludin Haji Jamal v Shafir Jalaludin Haji Jamal**, Civil Appeal No. 55 of 2003 (unreported). In the said case, a case number was wrongly cited but it was held that such omission does not go to the root of the matter.

In his reply submission Mr. Chipaso also raised an issue regarding the counter affidavit that it does not contain a jurat of attestation contrary to section 8 of Notary Public and Commissioner for Oaths Act Cap 12 [R.E 2019] whereby section 8 provides that every oath should contain jurat of attestation. It was Mr. Chipaso's view that, just as the error in the verification clause was just a slip of the pen similarly the counter affidavit is also defective.

On rejoinder Mr. Mkwikwini submitted that the case cited by learned advocate for the applicant in **Leila Jalaludin Haji Jamal v Shafir Jalaludin Haji Jamal** [supra], is distinguishable to the circumstance of this matter because in that case the issue was wrong citation of the case number while in the present matter it is all about verification clause. On the issue of the defective counter affidavit, the learned advocate for the *Appellee*.

respondent contended that, the counter affidavit in the present matter is proper.

Having gone through the submissions of the parties, this matter needs not detain me longer than it is necessary. The respondent maintains that the verification clause is defective because of the inclusion of the word advocate while the person verifying on the said affidavit who is the applicant herein is not an advocate. The applicant concedes that the inclusion of the word advocate was a mere typing error and it does not go to the root of the matter.

Reference was made to section 2 of the Act. The said section merely defines who is an advocate it does not say anything regarding verification clause. It provides;

"Advocate" means any person whose name is duly entered as an advocate upon the Roll";

I am of the view that the respondent has not been prejudiced in anyhow by the inclusion of the word "advocate" on the verification clause because that was a mere typing error. This is evidenced by the fact that the respondent was able to respond to the said affidavit by way of counter

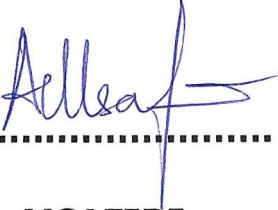
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affidavit. Regarding the contention by the applicant's advocate on the defective counter affidavit as it does not have a jurat, that objection was raised in the course of submission with the aim of pre-empting the objection by the respondent and it is hereby rejected.

In upshot and for the foregoing all the preliminary objections raised by the parties are hereby overruled with costs.

It is so ordered.




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A. MSAFIRI,
JUDGE
26/7/2022