

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MIS. LAND APPLICATION NO. 177 OF 2023**

**JANETH NYAKALILO KUSSAGA1ST APPLICANT
WILLY NYAKALILO KUSSAGA 2ND APPLICANT**

VERSUS

**EDGAR MANYANYA 1ST RESPONDENT
MAGILANI SAKINOI 2ND RESPONDENT
LUGANO ANYISISYE CHISAMBA 3RD RESPONDENT
MARIAM MULANGA 4TH RESPONDENT
WAIDA MULANGA 5TH RESPONDENT
CHARLES SOKO6TH RESPONDENT
HAPPY WALWA SAYI7TH RESPONDENT
JACOB IWATO8TH RESPONDENT
EDWIN IWATO9TH RESPONDENT
GLORY IWATO10TH RESPONDENT
SAMWEL THOBIAS CHILUMBA 11TH RESPONDENT
DISTRICT COMMISSIONER, KINONDONI DISTRICT12TH RESPONDENT
KINONDONI MUNICIPAL COUNCIL 13TH RESPONDENT
COMMISSIONER FOR LANDS 14TH RESPONDENT
THE ATTORNEY GENERAL 15TH RESPONDENT**

RULING

Date of last Order: 19/6/2023

Date of Ruling: 18/7/2023

A. MSAFIRI, J.

The applicants hereinabove have instituted this application under Order 37 Rule 1 (2) of the Civil Procedure Code Cap. 33 R.E 2019 (herein the

Alls.

CPC), seeking for an order of temporary injunction restraining the respondents on the land described in the chamber summons as suit premises. The application is supported by a joint affidavit of the applicants. The 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th respondents also filed their joint counter affidavit and along with it, they filed a Notice of Preliminary Objection in which they filed two points of objections to the effect that;

- 1. That, the applicant's application is bad in law for it contain a defective verification clause.*
- 2. That, the application is bad in law for it contain a defective jurat of attestation.*

Also, the 12th, 13th, 14th, and 15th respondents raised a preliminary point of objection that;

- i. That the application is untenable by law for being filed and prepared by unqualified person.*

As it is the law, once a preliminary point of objection is raised, the Court is duty bound to entertain it first and make decision thereon before proceeding with the matter on merit.

The preliminary objection was disposed of by way of written submissions.

Alle

The submissions by the 1st – 10th respondents in support of a preliminary objection was drafted and filed by Ms. Irene Felix Nambuo, learned advocate from Legal and Human Rights Center (LHRC), the submissions by the 12th – 15th respondents in support of their raised preliminary objection was drawn and filed by Mr. Urso Luoga, learned State Attorney. The reply submissions by the applicants were drawn and filed by Mr. Edward M. Lisso, learned advocate.

I have read the submissions by the respondents and reply by the applicants, and the major issue for my determination is whether the preliminary objections raised are tenable.

Starting with the objections raised by the 1st – 10th respondents, on the first point of objection that the applicants' application is in bad in law for containing a defective verification clause, Ms. Nambuo submitted that, the 1st – 10th respondents were served with the chamber application with unsigned verification clause contrary to the law.

That the application has contravened Order VI Rule 15 (3) of the CPC which provides that;

"The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed"

Alls

She argued that failure to put a signature by the person who verifies the pleaded facts, then the verification clause is rendered defective and ought to be struck out.

To cement her point, Ms. Nambuo referred this Court to the cases of **Penina Mhere Wangwe & 31 others vs. North Mara Gold Mine Limited**, Land Case Application No. 19 of 2022, TZHC 16153 and **Samwel Kimaro vs. Hidaya Didas**, Civil Application No. 20 of 2012 CAT (unreported).

On reply to the first point of objection, Mr. Lisso, submitted that, the claims by the applicants that they were served with the chamber application with unsigned verification clause contrary to the law does not conclusively discern that the filed documents before this Court are the same, and no proof has been exhibited by the respondents.

Mr. Lisso argued that, the fact that the respondents were served with unsigned verification clause, might be a human error which ought to be rectified without waiting for recourse to raise an objection.

He prayed for the Court to apply the principle of overriding objection on the matter at hand as the defect does not go to the root of the application. *Alle.*

On rejoinder, Ms. Nambuo, submitted that, the 1st – 10th respondents have noted that the applicants have partially conceded to the objection and relied on the overriding objective principle. She argued that the principle of overriding objective cannot be applied blindly and the Court should not overlook the errors.

Pertaining this first point of objection, I have read the pleadings in the Court's records and satisfied that the verification clause in the chamber application has been signed accordingly as per the law. The verification clause has been signed by both applicants as it is clearly seen in the chamber summons and the joint affidavit.

This shows that the copies of the pleadings which were served to the 1st – 10th respondents were not duly signed.

However, since the documents which are relied upon by the Court is the one filed to the Court and not copies served to the parties, then this point of objection is untenable as the documents filed to the Court were properly signed.

I agree that the applicants might have made a human error when they served the respondents with the unsigned verification clause. However it is my view that since the Court's records are correct according to the law, the remedy here is not to struck out the matter but to rectify

Alles

the situation by the Court ordering that the respondents be served with proper documents. The first point of objection is overruled.

The second point of objection by the 1st – 10th respondents is that, the application is bad in law as it contains defective jurat of attestation. Ms. Nambuo submitted that, in reference to the applicant's affidavit served to the 1st – 10th respondents, it is vivid that attestation was not properly signed and attested by the applicants. That since the applicants did not sign, the application is rendered to be incompetent.

Since this point of objection is on the claims that the applicants did not sign the documents which were served to the 1st – 10th respondents, then, I need not take more time to determine it as I have already given my findings when I was determining the first point of objection which is similar to this second point.

Both points of objections reveals the fact that the application documents which were served to the 1st – 10th respondents were not signed by the applicants as per the requirements of the law. However, as I have already observed, this application is proper before the Court as all the documents filed in Court have been properly signed and attested by the applicants. What should be done in the situation is for the applicants to re-serve the 1st – 10th respondents with the duly signed documents. *Alls.*

I also find this second objection to have no merit and I overrule it.

On the point of objection raised by the 12-15th respondents that the application was untenable in law for being filed and prepared by unqualified person, Mr. Luoga submitted that the advocate for the applicants have instituted this application without having a valid practicing Certificate in which he has never disputed. That this is contrary to Section 39(1) (b) of the Advocates Act, Cap 341.

Mr. Luoga argued that on 29th March 2023, Mr. Edward Lisso, acting as an advocate, filed for the current application knowing that he was unqualified person. That, this act has rendered this application incompetent before the Court and the remedy is to strike the same out as it was ruled in the case of **Shangwe Mjema vs. Frida Salvatory and 1 other**, Civil Appeal No. 103 of 2017, CAT at DSM (unreported). The counsel prayed for this Court to uphold the preliminary objection and struck out the application with costs.

On reply, Mr. Lisso submitted that first, this being an application for temporary injunction does not concern the 12th – 15th respondents as they are Government institutions hence governed by Order 37 Rule 1 (b) of the CPC which provides thus;

Alle

“Provided that an order granting a temporary injunction shall not be made against the Government but the Court may in lieu there of make an order declaratory of the rights of the parties.”

Mr. Lisso, hence urged this Court to exempt the 12th – 15th respondents from this application.

Second, Mr. Lisso argued that, the respondents have only raised a concern under the guise of an objection and have not filed any formal notice of preliminary objection, hence he prayed for this Court to reject the said “concern” in disguise of an objection.

Without prejudice to the initial submissions, Mr. Lisso, submitted further in response that, the preliminary objection should be on points of law as it was set in the case of **Mukisa Biscuits Manufacturing Company Ltd vs. West End Distributors Ltd** [1969] EA 696.

That, in the current application, the objection raised demands an ascertainment of facts. Mr. Lisso stated that proviso to Section 38 (1) of the Advocates Act, Cap 341 R.E 2019 provides a grace period of one month between first day of January to first day of February of each year for practitioners whose certificates are in the course of renewal process.

He pointed that the renewal process takes six (6) months and the consequences of failure by a practitioner to renew a practicing license are

Alle.

provided under Regulations 5 of the Advocates (Admission and Practicing Certificate) Regulations, 2015, GN. No. 62 of 2015.

Mr. Lisso, submitted that, at the material time, the drawer's renewal was under way having submitted documents from Tanganyika Law Society to the Registrar of High Court on 6th February 2023. It was his view that since the drawer's renewal process was under way and fell within the renewal period, it was quite in order and that is why the application at hand was not rejected by the Deputy Registrar on filing.

He submitted that Section 41 of the Advocates Act, is silent on the fate of the documents prepared by the "unqualified person", and second, the renewal period has not expired, so it is far fetched for the counsel for the 12th – 15th respondents to question the validity of the application.

He prayed for the Court to overrule the objection raised by the counsel for 12th to 15th respondents and order for the matter to proceed on merit. There was no rejoinder from the 12 – 15th respondents.

The major question here is whether on 22nd day of March 2023, when he first signed the pleadings, the advocate for the applicants had a valid practicing certificate as per the requirements of Section 39 of the Advocates Act. Mr. Lisso has admitted that on at the time he was filing and signing the application documents, his license of practice had expired.

Alle.

It is the argument by Mr. Lisso that, the renewal process takes 6 months and the consequence of failure to renew the same is not to strike out the whole application.

The applicants' counsel stated that on 27th March 2023 when he filed and signed the application documents, he was in the sixth months renewal period as the he has submitted the documents for renewal on 06th Feb 2023 and practicing Certificate was issued on 18th April 2023.

I have read the document attached by the 12th – 15th respondents which was attached with their submission and it shows that the last date of the Certificate of Practicing for Mr. Lisso was 14th April 2023 and he was not active.

If the starting date for Mr. Lisso's practice started Jan 1, 2023 and ends on April 14 2023, then I am convinced that, Mr. Lisso was first on grace period of one month i.e. January 1, 2023 to February 1, 2023.

Mr. Lisso, argued that on March 27, 2023 when he signed the applications he was within the period of renewal of the Certificate.

To my interpretation of the Regulation 5 of the Advocates (Admission and Practicing Certificate), Regulations, 2015, the advocate has to renew his certificate within six months of expiry date. *Alle.*

But the said Regulation is silent on whether during this six months while processing for renewal, this advocate is qualified to practice as an advocate and have all rights as a practicing advocate. Since the law is silent on that, then the position of Mr. Lisso when signing the application's documents is uncertain. From this analysis I find that the preliminary point of objection raised by the 12th - 15th defendants is not on pure points of law as it invite ascertainment of some facts for the same to stand. I find that this disqualify the said preliminary objection and the same is overruled.

For the foregoing reasons, all preliminary objections are overruled with no order for costs.

It is so ordered.



A. MSAFIRI
JUDGE
18/07/2023

