

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

MISC. LAND CASE APPLICATION NO.609 OF 2023
(Originating from Land Appeal No. 261 of 2023)

WINFRIDA LAWSON RUHUMBIKA NTAREMWA MALIBWA
(Suing through next friend
RUHUMBIKA NTALEMWA).....APPLICANT

VERSUS

JOHN KIMARIO.....RESPONDENT

RULING

Date of Last Order: 03.10.2023
Date of Ruling: 27.10.2023

T. N. MWENEGOHA, J.

Before me is an Application for leave to appeal to the Court of Appeal of Tanzania, by the applicant herein above. The Application followed the Judgment of Honourable E. B. Luvanda, J. given on 25th August 2023, in Land Appeal No.261 of 2013. It was brought under **Section 5(1) (c) of Appellate Jurisdiction Act, Cap 141 R. E. 2019 and Rule 45(a) and 49(3) of the Court of Appeal Rules of 2009** as amended by GN No. 362 of 2017 and 344 of 2019. It was accompanied by the affidavit of the applicant, Ruhumbika Ntalemwa.

The respondent on the other hand, objected the Application on the ground that, the affidavit is defective for containing a defective verification clause. Owing to the existence of the Objection by the respondent, this Court

ordered both, the Objection and the Application to be argued by written submissions, simultaneously. Parties complied with the order, and filed their submissions for the Application and the Objection as ordered.

As rules direct, I will start to dispose the objection, before I deal with the main Application.

In his written submissions in support of the Objection, Advocate Ambroce Manace Nkwera, maintained that, the verification clause is defective. That, affidavit in question contains paragraph 9, which has a-n. But the verification clause on paragraph 9 has been verified, in exclusion of item a-n. That, this is wrong as the information contained in those subparagraphs were not verified.

It was his argument therefore, that the verification clause is defective as stated in **Jacqueline Ntuyabaliwe Mengi & Two Others versus Abdiel Reginald Mengi & Five Others, Misc. Civil Application No. 332.01 of 2012, Court of Appeal of Tanzania (unreported)** and also the case of **Jonester Treseaus Rwabigendera@ Jonester Jones versus Elizabeth Nelson Ngaiza, Revision No. 6 of 2022, High Court of Tanzania at Sumbawanga (unreported)**.

In reply, Mr. Tumaini Mgonja for the applicant, insisted that, the Objection is devoid of merits. That, the verification clause is not at all defective as the contents of paragraph 9 have all been verified. That, there is no provision in the Civil Procedure Code, directing how paragraphs should be verified. That, it is impossible to separate a paragraph and subparagraphs as stated in **William Benedictor versus Platinum Credit Limited, Labour Revision No. 34 of 2019, High Court, Labour Division (unreported)**.

Having heard the submissions of both parties, for and against the Objection, the issue for determination is whether the same has merits or not.

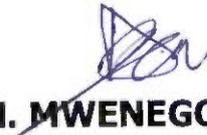
It is a settled rule on affidavits, that, any affidavit intended to be used in judicial proceedings should, among other things, be properly verified, see **Mantrac Tanzania Ltd vs Raymond Costa, Civil Appeal No. 11 of 2010, Court of Appeal of Tanzania at Mwanza, (unreported)**. Blanked verification of affidavits is not a proper verification of the same. Proper verification of affidavit should be a verification of all paragraphs and their subparagraphs separately as stated in **Mlela Ramadhan vs Mahon Butungulu, Misc. Land Case Application No. 20 of 2019 High Court of Tanzania at Tabora (unreported)**. See also **Jonester Treseaus Rwabigendera@ Jonester Jones versus Elizabeth Nelson Ngaiza (supra)**.

Clearly, the matter has been addressed before by Court of law in different scenarios as those highlighted in the cases referred above. The facts of this Application is very similar to the referred cases.

On this account, I find the Objection to have merits. The same is sustained and the affidavit is found to be incurably defective. Hence the same cannot support the Application at hand. In that case, the Application is hereby struck out with costs.

It is so ordered.




T. N. MWENEGOHA

JUDGE

27/10/2023