

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 484 OF 2016
(From HC Miscellaneous Civil Cause No. 59 of 2005)

DIAMOND SHIPPING SERVICE LTD APPLICANT
VERSUS

ZARAU TOWELA RESPONDENT

Date of Last Order: 08/11/2016

Date of Ruling: 14/12/2016

RULING

FELESHI, J.:

This ruling has basis from an application made by the applicant by way of Chamber Summons in terms of section 11(1) of the Appellate Jurisdiction Act, [CAP. 141 R.E, 2002] for extension of time to file a Notice of Appeal to the Court of Appeal. The said Chamber Summons was supported by an affidavit sworn by one Yohanes Konda, advocate.

In his affidavit, the deponent averred that, in an application for prerogative orders which were granted on 17/06/2016, the applicant was represented by Mr. Stanslaus Ishengoma, advocate, who on 27/06/2016 tendered a resignation letter and left the law firm without handing over matters which he had been representing clients. It was until 15/07/2016 when it came into the deponent's knowledge after been assigned that task.

On 09/09/2016, the respondent's counsel raised a preliminary objection on three (3) points of objection to wit that:-

1. **The chamber application and applicant's affidavit are bad in law hence un-maintainable before this Court.**
2. **The affidavit in support of the application possesses a defective jurat of attestation.**
3. **The verification in the applicant's affidavit is incurably defective.**

Hearing of the preliminary objection was conducted by way of written submissions whereas the respondent was represented by Bemora Attorneys while the applicant did not enter appearance for reasons undisclosed to this Court despite presence of Ms. Subira Omary, learned counsel for the respondent on the scheduling date.

Addressing the 1st limb of preliminary objection, Mr. Mashaka Edgar Mfala, advocate submitted that, the name of the drawer is lacking contrary to section 44(2) of the Advocates Act, [CAP. 341 R.E, 2002] that reads:-

"It shall not be lawful for any registering authority to accept or recognise any instrument unless it purports to bear the name of the person who prepared it endorsed thereon".

Regarding the 2nd limb, Mr. Mfala submitted that, in the jurat of attestation, the Commissioner for Oaths does not disclose whether the deponent was known or identified to him thus rendering the affidavit defective as held by the High Court in **Patrick Magologozozi Mongela vs. The body of Registered Trustees of Public Service Pensions Fund**, Revision No. 222/2015, (Dar es Salaam Registry), (Unreported).

As to the 3rd limb, the respondent's counsel submitted that, since the contents of paragraph 3 line 6 of the applicant's affidavit contravenes Order VI Rule 15(2) of the Civil Procedure Code, [CAP. 33 R.E, 2002] as

were on information from a Court clerk, the same ought to have been so stated in the verification clause as was not of the deponent's own knowledge. It was from the above he urges for the preliminary points of objection to be sustained and thus dismissal of the application with costs.

Having considered the Court record and the submission by the respondent's counsel, the following are the deliberations of this Court in disposal of the raised points of preliminary objection.

Starting with the 1st limb, both the Chamber Summons and supporting affidavit are clear that, the same were prepared by FB Attorneys pursuant to the referred section 44(2) of the Advocates Act (supra). From that position alone, the 1st limb lacks merits and it is hereby overruled.

Regarding the 2nd limb, the assertions that the jurat of attestation does not disclose whether the Commissioner for Oaths knew the deponent or was identified to him by someone is non meritorious in law because the said jurat of attestation is clear as to that objection as it reads:-

"Sworn at Dar es Salaam by the said Yohanes Konda who is known to me personally in this day of 22nd of July, 2016".

Therefore, since the requirements of the law in terms of section 8 of **the Notaries and Commissioners for Oaths Act**, [CAP. 12 R.E, 2002] are clear as to the place and date of attestation in the jurat of attestation, this Court firmly finds the raised preliminary point of objection by the respond's counsel un-maintainable thus likewise, overruled.

In respect of the 3rd point of preliminary objection that the contents of paragraph 3 line 6 of the applicant's affidavit contravenes the provisions of Order VI Rule 15(2) of the Civil Procedure Code (supra) for containing information from the Court clerk which was not so stated in the verification clause, this Court finds that argument meritorious for that is what is exactly stated in the verification clause. But the immediate question is as to what stand the legal consequences and the available remedy thereof (if any).

This Court is of a firm considered view that, for the sake of substantial justice, any defect in the verification clause be it in the affidavit or any other pleadings is curable in law. For instance, in **F.A. Sapa vs. Singora** [1991] 3 SCC 375 the Court underscored that:-

"The object of requiring verification is clearly to fix the responsibility for the averments and allegations in the petition on the person signing the verification and at the same time discouraging wild and irresponsible allegations unsupported by facts".

Moreover, this Court finds it pertinent to import the reasoning by SRI. G.C. MOGHA in THE LAW OF PLEADINGS IN INDIA, 14th Edition, published by Eastern Law House as it reads at pages 58 & 59 that:-

"Want of signature or verification or any defect in either will not make the pleading void, and a suit cannot be dismissed nor can a defence be struck out simply for want of, or a defect in the signature or verification of the plaint or written statement, as these are matters of procedure only. It has been treated to be a mere irregularity and curable by amendment. The defect may be cured by amendment, at any stage of the suit, and when it is cured by amendment, the plaint must be taken to have been presented on the date on which it was amended. If the defect is discovered in appeal, the appellate Court may, if it thinks fit, have the defect removed, but where the

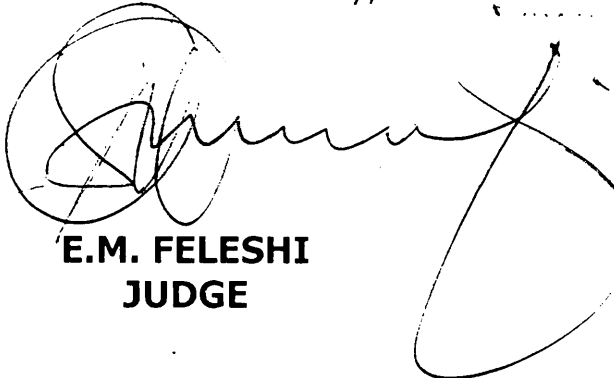
defect is such that it does not affect the merits of the case, no notice of it need be taken".

Likewise, in MULLA, THE CODE OF CIVIL PROCEDURE, 16th Edition, Volume II it reads at page 1181 that:-

"A pleading which is not verified in the manner required by this rule may be verified at a later stage of the suit, even after the expiry of the limitation period. The omission to verify a pleading is a mere irregularity within the meaning of s 99 of the Code. The expression 'any error, defect or irregularity in any proceeding in any suit' includes signing and verification as laid down in O 6, rr 14 and 15 and could be cured at any stage".

From the above in unison, this Court finds the alleged defect is curable in law. Therefore, the 3rd limb of preliminary objection is partly meritorious and it is partly sustained and the defective affidavit is struck out. But basing on the immediate above line of reasoning, the applicant is granted leave to file a fresh affidavit with correct verification clause within fourteen (14) days from the date of this Ruling. Considering that the applicant did not enter appearance, I make no order as to costs. Order accordingly.

DATED at Dar es Salaam this 14th February, 2017



**E.M. FELESHI
JUDGE**

COURT: Ruling is delivered this 14th day of February, 2016 before Hon. E. M. Feleshi, Judge in the presence of Ms. Subira Omary, learned Advocates for the Respondent but, in the absence of the Respondent.



E.M. FELESHI
JUDGE