IN THE HIGH COURT OF TANZANIA
AT TANGA

MISC. CIVIL APPL. 27 OF 2006
(Originating from Probate and Administration No. 68/1968
High Court Tanga)

1. **FATUMA BAKARI**
2. **ASHA BAKARI .....APPLICANT**

VERSUS

AHMED MOHAMED LAAMAR .....RESPONDENT

24/8/07 & 21/11/07

RULING

SHAYO, J.

The instant matter has its genesis in Probate and Administration Cause No. 68/1968 which is in respect of the late ABUBAKAR Bin Hassani. Essentially, the two applicants, namely, Fatuma Bakari and Asha Bakari are seeking the order of this court to revoke the Grant of letters of Administration granted to the respondent Ahmed Mohamed Al-Raamar in Probate and Administration Cause No. 68/1968 in respect of the Estate of the late Abubakar bin Hassani. The applicants are being advocated by Mr. Kilule, learned counsel, while the respondent is represented by Mr. Akaro, learned counsel.

As usual, the application was filed by way of Chamber Summons by the learned counsel, Mr. Kilule on behalf of the applicants. The chamber summon dated 4th August, 2007 was supported by a joint affidavit of the

applicants. It was allegedly made under section 49 (d) of the Probate and Administration Ordinance, Cap. 445 and Rule 29 (1) and (4) of the Probate and Administration Rules, Cap. 445 of the Laws of Tanzania.

On 19/10/06 when the matter came before the District Registrar for mention, the following is what transpired in court:-

> **"Kilule Advocate:** The matter is coming for mention and we pray for leave to file a joint affidavit, as there are documents which were not in our possession when we filed this application. We have it now if our prayer is granted we shall be able to file by today.
> **Akaro Advocate:** I have no objection but in the event we pray to be served with the proper application and mean time we file our counter affidavit.
> **Court:** Prayer granted.
> **Order:** - Fresh application to be filed today and the same to be served to the counsel for respondent today.
> - C/affidavit to be filed on or before 10/11/06.
>
> Mention on 15/11/06.
>
> **Sgd: DR.**
> **19/10/06**

On 14/6/2007 upon request the court ordered that arguments be made by way of written submissions as follows:-

> ".....written submissions by Mr. Kilule Advocate on or before 5/7/07. Rejoinder if any on 6/8/07. Ruling on notice."

However, on 6/8/07 Mr. Kilule applied for extension of time to file his rejoinder which was duly granted. He was ordered to file his rejoinder by 24/8/07.

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The same was filed on 20/8/07 as per exchequer Receipt No. 28796001. It is not irrelevant to mention that earlier, the applicants had filed their written submission on 5/7/07 vide exchequer Receipt No. 24157125; followed by the respondent on 26/7/07 as per exchequer Receipt NO. 24151749.

To a great extent, the arguments by the two learned counsels in their submissions were in support of their respective stances as contained in their affidavit and counter affidavit. It is trite to mention from the outset that the applicant's affidavit is headed Supplementary Joint Affidavit of Fatuma Bakari and Asha Bakari. It is not, however, accompanying any chamber summons as per court order dated 19/10/06. The same bears verification purportedly dated Dar es Salaam on 19/10/2006 and duly signed by Fatuma Bakari and Asha Bakari. The jurat, however, shows to be sworn at Tanga and signed by the two applicants on 19/10/06 before Commissioner for Oaths one Yusto Reverian Ruboroga who also signed on 19/10/06 and duly stamped Resident Magistrate Tanga.

The counter affidavit on the other hand, sworn by Ahmed Mohamed Al-laamari bears no verification clause not dated and signed by the deponent. However, the jurat is duly sworn, dated and signed at Tanga by the deponent before the Commissioner for Oaths on 9th November, 2006 and signed by S.L. Sangawe Advocate.

From the foregoing, I regret that I cannot determine the application on merits due to the short comings exhibited above, both in the affidavit and counter affidavit.

O.XLIII. Rule 2 of the Civil Procedure Code, (Cap. 33 R.E. 2002) provides:-

> "Rule 2. Every application to the court made under this Code **shall,** unless otherwise provided, **be made by a chamber summons supported by affidavit:** Provided that the court may where it considers fit to do so, entertain an application made orally, or, where the parties to a suit consent to the order applied to being made, by a memorandum in signed by all the parties or their advocates, or in such other mode as may be appropriate having regard to all the circumstances under which the application is made." (emphasis mine).

In this case the court order resulting from a prayer by Mr. Kilule learned counsel, was to the effect that afresh application be filed on 19/10/06 and the same be served on the respondent's counsel. That implied the earlier application – chamber summons supported by affidavit date 4th August, 2006 and 3rd August, 2006 were automatically discarded and with no legal effect. The applicants instead of filing a fresh application – that is chamber summons supported by affidavit, did file a supplementary affidavit on 19th October, 2006. There was no chamber summons which preceded it or accompanied thereto as required by O.LXLIII Rule 2.

That is one. Two, even assuming that there was a chamber summons, the purported supplementary affidavit was wanting. This is so because it is inconceivable that the verification was dated and signed by the deponents in Dar es Salaam on 19th October, 2006 but surprisingly the jurat was done at Tanga on the same date 19th October, 2007. How on earth could that be, the deponents being at different places at the same time. This is incredible and ridiculous, and in fact is was a pure prevarication on the part of the two deponents. There is yet another thing. The applicant's learned counsel might have in mind that he was to file a supplementary affidavit as he did in support of his earlier chamber summons.

But then that chamber summons suffered an incurable defect which rendered the application incompetent. He cited a wrong law that is Probate and Administration Ordinance Cap. 445. That has for long been outlawed by the Probate and Administration of Estates Act, (Cap.352 R.E. 2002). It is now settled law that wrong citation of a provision of the law or rule under which the application is made renders the application incompetent. (see: **China Henan International Co operative Group V. Salvand K.A. Rwegasira, Civil Reference No. 22 of 2005(unreported).**

In effect thereof, there is clearly an incomplete application before this court that is a supplementary affidavit accompanying no chamber summons.

The counter-affidavit by Ahmed Mohamed AL-Laamari is no better as it suffers an incurable defect. The verification was defective. Verification is

defined by **Blacks Law Dictionary** as "Confirmation of correctness, truth, or authenticity, by affidavit, oath, or deposition". The same author explains the grounds and importance of verification,

> "Affidavit of truth of matter stated and object of verification is to assure good faith in averments or statements of a person."

It is now settled law that an affidavit which is not properly verified, dated and signed after the verification clause, is rendered incurably defective not withstanding the signature of a deponent thereof on the jurat of attestation since the two are distinct and each serves a different purpose independent of the other. (see: **Wananchi Marine Products (T) Ltd. V. Owners of Motor Vessels Civil Case No. 123 of 1996) (unreported).**

Underscoring the importance of a date and signature after verification clause, Kalegeya, J. (as he then was) in the above case stated; (pg.9 – 10):

> "The acceptable style generally is to have deponed facts put in paragraphs which are in turn numbered, and to have a separate verification clauses immediately following the last paragraph and entitled "VERIFICATION". This clause is then signed and dated. This legally accepted practice however seems to have been vacated as increasingly parties and advocates no longer abide by it. Some simply add another paragraph, as the two affidavits indicate, while some don't even bother to date them let alone signing them. All these

categories violate the law. The jurat should not be confused with a verification clause. Thus, a signature or date which is affixed on a jurat does not suffice for the verification clause. The latter should have a separate signature of the deponent".

As earlier demonstrated, the respondent's counter affidavit is therefore incurably defective. There is an indication of a verification clause immediately after para 12 but it is not titled so. That is one, two: there is no indication of a date, place and signature after the verification clause even if the absence of the term verification were to be rendered inconsequential.

In the final result, for the foregoing reasons discussed at length, the application is struck out with costs.

A.A.M. SHAYO
JUDGE
12/11/07

Delivered at Tanga this 21st day of November, 2007.

A.A.M. SHAYO
JUDGE
21/11/07

For Appellant: Mr. Kilule – Advocate.
For Respondent: Mr. Akaro – Advocate.