

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 01 OF 2023

**IN THE MATTER OF THE CONSTITUTION OF THE UNITED REPUBLIC OF
TANZANIA OF 1977, AS AMENDED**

AND

**IN THE MATTER OF THE BASIC RIGHTS AND DUTIES ENFORCEMENT
(PRACTICE AND PROCEDURE) RULES, 2014**

AND

IN THE MATTER OF THE LAW SCHOOL OF TANZANIA ACT, CAP. 245

AND

**IN THE MATTER OF THE LAW SCHOOL OF TANZANIA (STUDENTS'
PERFORMANCE ASSESSMENT AND AWARDS) BY LAWS 2011**

AND

IN THE MATTER OF THE ACCESS TO INFORMATION ACT, 2016

AND

**IN THE MATTER OF A PETITION TO CHALLENGE THE ACTS AND
OMISSIONS OF THE 1ST AND 2ND RESPONDENTS AS BEING
UNCONSTITUTIONAL**

BETWEEN

ALEXANDER J. BARUNGUZA PETITIONER

VERSUS

LAW SCHOOL OF TANZANIA 1ST RESPONDENT

HON. JUDGE DR. BENHAJJ SHAABAN MASOUD 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

RULING

27th March & 09th May, 2023

BWEGOGGE, J.

The petitioner herein above named has lodged a petition in this court seeking to challenge the constitutionality of the acts and omissions of the 1st and 2nd respondents herein in respect of the marking of the petitioner's answer scripts in the 1st sitting of his final and supplementary examination; procedure used to determine his appeal; and administrative response to the misconduct of the instructor working with the 1st respondent.

Upon the respondents filing the counter affidavit, the petitioner filed a notice of preliminary objections on point of law pertaining to the defects in the pleadings filed by the respondents. In total, the petitioner raised eight (8) preliminary objections. After discussion, the petitioner opted to argue a total of four (4) preliminary objections. The arguable preliminary objections are as follows:

1. That the respondent's reply to the originating summons and the respondents' joint counter affidavit are incurably defective for being signed and verified by an unauthorized person contrary to order XXVIII, rule 1 of the CPC (Cap. 33 R.E. 2022); Order VI, rule 14 of

the same and Rule 6(1) of the Basic Rights and Duties Enforcement (Practice and Procedure) Rules, 2014.

2. That the respondents' joint counter affidavit is defective for containing arguments, contradictions, hearsays, opinions and extraneous matters contrary to Order XIX, rule 3(1) and (2) of the CPC.
3. That the respondents' joint counter affidavit is defective as the verification clause doesn't show which information was from the deponent own knowledge and, or otherwise from other sources contrary to Order VI, rule 15(2) of the CPC.
4. The respondents' joint counter affidavit is tainted with untruth statements.

The petitioner fended for himself whereas the respondents were represented by Messrs Stanley Kalokola and Steven Noel, state attorneys. The preliminary objections mentioned above were argued orally.

The petitioner, in substantiating the 1st preliminary objection, submitted that the joint counter affidavit is incurably defective for being signed and verified by an unauthorized person contrary to Order XXVIII, rule 1 of the Civil Procedure Code; Order VI, rule 14 of the same and Rule 6(1) of the Basic Rights and Duties Enforcement (Practice and Procedure) Rules,

2014. That the earlier provisions specify persons authorized to verify pleadings authorized by the corporation namely; the secretary, director and principal officer of the corporation. The petitioner cited the case of **Benson Enterprises Ltd vs Mire Artan** (Civil Appeal 26 of 2020) TZCA 90 to bring his point home.

The petitioner asserted that, the deponent in the joint counter affidavit who identified himself as the Deputy Principal, Training, Research and Consultancy in the 1st respondent's institution is not the authorized person recognized by law to verify the pleading filed herein. That the deponent introduced himself as the Deputy Principal Training, Research and Consultancy **"from"** the Law School of Tanzania, instead of using the word **"of"** the Law School of Tanzania. That the two words above mentioned don't have the same meaning. The petitioner opined that the Principal of the Law School of Tanzania, as per the provision of section 13 (4) of the Law School Act (Cap. 425), is the 2nd respondent herein, not the deponent in the joint counter affidavit. That by virtue of sections 13(4) and 134 (b) of the Law School Act, it is the 2nd Respondent who is enjoined with power to manage many operations of the 1st respondent. The mind of this court was drawn to the cases of **Evarist Steven Swai and Another vs the Registered Trustees of Chama cha Mapinduzi and**

Others, (Land Case No. 147 of 2018) TZHC Land D 3 and **Tanzania Breweries Ltd vs. Herman Bildad Minja** (Civil Application No. 11 of 2019) [2020] TZCA 63 to bolster the point.

On the above grounds, the petitioner concluded that it is obvious that there is no proper sworn affidavit in terms of Order VI, rule 1; and Order 1, rule 12(1) & (2) of the CPC, in respect of the 2nd and 3rd respondents. Hence, the joint counter affidavit filed herein is rendered defective. The case of **Melau Mauna and 24 others vs. the Registered Trustees of the Evangelical Lutheran Church in Tanzania (ELCT) Arusha Diocese**, (Civil Application No. 89 of 2021) [2022] TZCA 788 was cited to make a point. And, the petitioner opined that this court should follow the rule in the case of **Kahama Oils Mills Ltd vs. Wimbe Consult Ltd** (Misc. Civil Application 19 of 2019) [2020] TZHC 194 where it was held that the written statement of defence signed by unauthorized officer amounts to nullity.

In validating the 2nd preliminary objection, the petitioner submitted that the affidavit is defective for containing arguments, contradictions, hearsays, opinions and extraneous matters contrary to Order XIX, rule 3(1) and (2) of the CPC. That the depositions in paragraph 4 in the counter affidavit purport to invent that a candidate is a different person

from the student. That the question is whether a candidate is not a student in the strict sense. That paragraphs 5 and 6 of the joint affidavit contain hearsay as the facts deposed are solely within the knowledge of the 2nd respondent whose affidavit has not been filed. The cases of **Tanzania Breweries Co. Ltd** (Supra), **Mzee Mohamed Akida and Seven (7) others versus Low Shek Kon and 2 others** (Civil Application No. 481 of 2017) [2023] TZCA 36 were cited to buttress the point.

Further, the petitioner charged that paragraphs 7, 8, 10 and 12 of the joint counter affidavit likewise, contain hearsay, opinions, arguments, contradictions, opinions extraneous matters and matters of law. That the depositions in the joint counter affidavit are contrary to the principle restated in the case of **Jacqueline Ntuyabaliwe Mengi & Others vs Abdiel Reginald Mengi & Others** (Civil Application 332 of 2021) [2021] TZCA 583 in that the affidavits must be confined to facts and must be free from extraneous matters. Hence, opined the petitioner, the remedy available for the defective affidavit filed herein is to expunge the offending paragraphs.

In substantiating the 3rd preliminary objection, the petitioner argued that the verification clause doesn't show which information was from the

deponent's own knowledge and, or otherwise upon information received and believed to be true contrary to Order VI, rule 15(2) of the CPC. That the information deposed in the joint counter-affidavit could not have come from the deponent's own knowledge. The petitioner opined that the omission renders the joint counter-affidavit filed herein defective.

Lastly, in substantiating the 4th preliminary objection the petitioner alleged that in the joint counter affidavit filed herein, it is deposed that the petitioner is not a student of the 1st respondent herein whereas, to the contrary, in the previous cases (Reference No. 44 of 2021 and Misc. Civil Cause No. 12 of 2022) it was admitted that the petitioner is the student of the 1st respondent. That the joint counter-affidavit filed herein contradicts other counter affidavits in the previous aforementioned cases. The petitioner prayed this court to apply the principle in the case of **Ignazio Messina vs Willow Investments SPRL**, Civil Application No. 21 of 2001 CA (unreported) that "*an affidavit which is tainted with untruths is no affidavit at all and cannot be relied upon.*"

On the above premises, the petitioner prayed this court to sustain the preliminary objections.

On the other hand, Mr. Kalokola opened his counter-argument asserting that, there are no preliminary objections before this court in strict legal

sense. That the petition herein was brought under the Basic Rights and Duties Enforcement (Practice and Procedure) Rules, 2014 which stipulates who can lay preliminary objections. That rule 7 of the same, specifically states that it is only the respondent who can lay a preliminary objection in the proceedings of like nature. Therefore, opined the attorney, all the preliminary objections raised by the petitioner are misconceived and without basis in law. The cases of **Laurent Kavishe vs Enely Hezron** (Civil Application No. 5 of 2012) [2013] TZCA 365 and **Amos Fulgence Karugule vs Kagera Co-Operative Union** (1990) Ltd (Civil Application No. 435 of 2004 of 2017) [2017] TZCA 144 were cited to validate the point.

Notwithstanding the assertion above, in contesting the 1st preliminary objection, the attorney contended that the question whether the deponent in the joint counter affidavit was authorized to depone the facts deposed thereof or not, involves the determination of law and facts contrary to the principle in the case of **Mukisa Biscuits Manufacturing Company vs. West End Distributors Ltd** (1968) EA 69 in that any point of preliminary objection comprising fact, ceases to be a point of law. Further, the attorney contended that paragraphs 1 and 2 of the sworn affidavit provide information pertaining to authorization to act. Hence, this

court cannot rely on the statement of the petitioner from the bar to controvert what is deposed by the deponent therein. That the deponent is a Vice Deputy Principal of the 1st respondent whose title fits to be termed as the “principal officer.” The counsel referred the mind of this court to the case of **Benson Enterprises Ltd versus Mire Artan**, (supra) in which the term “**Principal Officer**” of the corporation is defined in his favour. Otherwise, the attorney opined that the principle in the case of **Evarist Steven Swai and Another vs. the Registered Trustees of Chama cha Mapinduzi and Others** (supra) doesn’t apply in the circumstances of this case.

In respect of the 2nd preliminary objection the attorney countered that to his understanding, the facts sworn emanated from the deponent’s own knowledge. Thus, the affidavit filed herein properly complies with Order IX of the CPC. Otherwise, the counsel opined that it is upon this court to go through the facts sworn in the joint counter-affidavit and discern what amounts to argument, contradiction, hearsay, opinion *et cetera*, as alleged by the petitioner based on decided cases.

And, in respect of the 3rd objection, the attorney argued that the proper guidance on how should the affidavit be verified is given in the case of **Anatol Peter Rwebangira vs Ministry of Defence and National**

Service and Another, Civil Application No. 548/04 of 2018 CA (unreported) in that an affidavit for use in court, being a substitute for oral evidence, should only contain statements of facts and circumstances to which the witness deposes either of own personal knowledge or from information which he believes to be true. The attorney reiterated that the facts sworn emanated from the deponent's own knowledge. Hence, it is their take that the joint counter affidavit has been properly verified.

Finally, in responding to the allegation that the joint counter affidavit is tainted with untrue statements; primarily, the attorney subscribed to the rule that the affidavit should not contain untrue statements. However, he argued that it needs evidence to conclude that the affidavit contains untrue statements. And, such evidence cannot be procured in determining preliminary objection. That though this court is invited to take judicial notice of the petitioner's previous cases, the prayer is misconceived for the reason that the cases cited were registered in 2021 and 2022 whereas the status of affairs deposed thereof cannot be the same in 2023. The attorney opined that the last preliminary objection is untenable as well.

The attorney summed up his counter-arguments by stating that the preliminary objections advanced herein are without substance. Thus, they

should be overruled. In rejoinder, the petitioner reiterated his previous stance which I find it needless to recount herein.

At this juncture, I am bent to discuss the substance (or otherwise) of the preliminary objections raised herein.

From the outset, I find it pertinent to address the argument made by the counsel for the respondents in that there are no preliminary objections in place, in the strict legal sense. That rule 7, of the Basic Rights and Duties Enforcement (Practice and Procedure) Rules, 2014 provides to the effect that it is only the respondent who can lay a preliminary objection in a proceeding of like nature. Therefore, he opined, all the preliminary objections raised by the petitioner are misconceived and without basis in law.

For clarity, I find it fit to reproduce the relevant provision *verbatim* as under:

"Rule 7(1) the respondent who intends to challenge the Court's jurisdiction to hear the petition shall file the notice of preliminary objection when filing the reply to the petition."

To my understanding, the above cited rule lay the procedure for filing notice of preliminary objection in proceedings of like nature by the respondent who intends to challenge the court's jurisdiction to hear the

petition. In essence, the provision revisited above doesn't preempt the petitioner herein to file notice of preliminary objections though, arguably, I find it strange for the petitioner herein to have taken the like course. In the same vein, the case of **Laurent Kavishe vs Enely Hezron** (supra) doesn't support the argument made by the counsel for the respondents. In the respective case the superior court discussed the respondent's right under rule 107 of the Court of Appeal Rules, 2009 to raise preliminary objection, and concluded that *"raising preliminary objection under the above-mentioned rule is a weapon available to a respondent not to an applicant."* See also the cases of **The University of Dar es Salaam versus Silvester Cyprian and 210 Others** (1998) TLR 175 and **Haji Hassan Amour and 112 others versus The Managing Director, Peoples Bank of Zanzibar**, Civil Application No. 20 of 2011, CA (unreported). Hence, the argument by the counsel for the respondents herein is misplaced.

I now proceed to discuss the merit (or otherwise) of the preliminary objections raised herein by the petitioner. In the 1st preliminary objection on point of law, the petitioner alleges that the respondents' reply to the originating summons and joint counter affidavit are incurably defective for being signed and verified by an unauthorized person contrary to the

provisions Order VI, rule 14 and Order XXVIII, rule 1 of the CPC. Order VI, rule 14 of the CPC provides that:

*"Rule 14: Every pleading shall be signed by the party and his advocate (if any); provided that where a party pleading is, by reason of absence or for other good cause, unable to sign his pleading, **it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.**"* Emphasis mine.

And, in the same vein, the provision of Order XXVIII, rule 1 of the CPC which I find appropriate in the circumstances of this case provides as under:

*"Rule 1: In suits by or against a corporation, **any pleading** may be signed and verified on behalf of the corporation by **the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.**"* Emphasis mine.

Unarguably, by virtue of section 4 (2) of the Law School of Tanzania Act, the 1st respondent herein is a body corporate capable to sue and, or be sued. The provisions of Order XXVIII, rule 1 of the CPC cited above are clear in that **any pleading** filed by the corporation may be signed and verified by **the secretary, any director** or **other principal officer** of the corporation who is able to depose to the facts of the case. In the same

vein in the case of **Benson Enterprises Ltd vs Mire Artan** (supra), it was held as thus:

*" In accordance with Order XXVIII, rule 1 of the Code, a plaint for the institution of a suit by a corporation or company must be signed and verified by the three categories of persons: **One**, the company secretary, **two**, any of the directors of the company and **three**, any principal officer of the company who is able to depose the facts of the case."*Emphasis mine.

The petitioner has argued that it is the 2nd respondent herein who is a principal officer of the 1st defendant, not the deponent in the counter affidavit. It is obvious the petitioner has misconstrued the term "**principal officer**" employed in the relevant provision. Admittedly, as rightly submitted by the petitioner, the Principal of the Law School of Tanzania, the 1st defendant herein, is the Chief Executive Officer of the same whose appointment and powers are provided forth under section 13 of the Law School Act. However, the term "**principal officer**" employed in the afore reproduced provision refers to someone with an administrative or management position in the corporation. It is in this spirit that the provision of Order XXVIII, rule 1 provides that pleading may be signed and verified on behalf of the corporation by the "**secretary**" or by any "**director**" or "**other principal officer**" of the corporation who is able

to depose to the facts of the case. The word “**other principal officer,**” in my opinion, doesn’t refer to the chief executive officer of the corporation. As correctly submitted by the counsel for respondents, Prof. Zakayo N. Lukumay, the Deputy Principal handling practical legal training, research, publications and consultancy of the 1st respondent herein, fit in the category of “**other principal officer of the corporation**”. It is my considered opinion that, apart from his deposition that he was authorized to depone the matters deposed in the affidavit, the Deputy Principal of the 1st defendant is authorized by law to sign and verify the reply to the originating summons and joint counter affidavit filed hereto.

The argument that the deponent in the joint counter affidavit identified himself as Deputy Principal “**from**” the Law School of Tanzania instead of the magical word “**of**” the Law School of Tanzania, in my opinion, is not fatal to render his deposition defective. It is needless to state that the provision of Rule 6(1) of the Basic Rights and Duties Enforcement (Practice and Procedure) Rules, 2014 would not apply to support the petitioner’s argument in buttressing the 1st limb of his advanced preliminary objection as the respondents herein have not failed to lodge their reply to the petition and counter affidavit to oblige this court to hear and determine the petition *ex parte*.

The cases cited by the petitioner herein to bolster his point herein above don't fit in the circumstances of this case. In the case of **Evarist Steven Swai and Another vs the Registered Trustees of Chama cha Mapinduzi and Others** (supra), the court found that the plaintiff had commenced civil proceedings against the defendant without the Board resolution passed prior to the institution of the said suit. And, in the case of **Melau Mauna and 24 Others vs the Registered Trustees of the Evangelical Lutheran Church in Tanzania (ELCT) Arusha Diocese** (supra), two applicants had not signed the joint counter affidavit whereas the apex court found that the omission rendered the affidavit in support of the notice of motion incurably defective. Lastly, in the case of **Tanzania Breweries Ltd vs Herman Bildad Minja** (supra), the apex court found that the counsel of the applicant deposed on the internal affairs of his client of which were only within the knowledge of the principal officer of the applicant, and not within the counsel's personal knowledge. It is patently clear that the facts in the cited cases are distinguished from this case.

I now proceed to tackle the 2nd preliminary objection in that the respondents' joint counter affidavit is defective for containing arguments, contradictions, hearsays, opinions and extraneous matters contrary to

Order XIX, rule 3 (1) and (2) of the CPC. The petitioner charged that paragraph 4 of the joint counter affidavit, is argumentative, and contradictory in nature which purports to invent that a candidate is a different person from the student. And, paragraphs 5 and 6 of the same contain hearsay of the information which is within the knowledge of the 2nd respondent whose affidavit has not been filed. Likewise, it was alleged by the petitioner that paragraphs 7, 8, 10 and 12 of the joint counter affidavit contain arguments, contradictions, opinions, extraneous matters and matters of law.

Unarguably, as rightly submitted by the petitioner, it is settled law that an affidavit should only contain statements of facts and circumstances to which the witness deposes and it should not contain extraneous matters by way of objection or prayer or legal arguments or conclusion. See in this respect the cases of **Uganda vs. Commissioner of Prisons, Expaerty Matovu** [1966] E.A. 514; **Phantom Modern Transport (1985) Ltd vs D.T. Dobie (Tanzania) Ltd**, Civil Reference No. 15 of 2001 and 3/2002 [unreported]; **Judicate Rumishael Shoo and 64 Others vs The Guardian Limited**, Civil Application No. 43 of 2016, CA; and **Jacqueline Ntuyabaliwe Mengi & Others vs Abdiel Reginald Mengi & Others** (supra).

As aforesaid, the petitioner alleged that paragraph 4 of the joint counter affidavit, is argumentative, and contradictory in nature which purports to invent that a candidate is a different person from the student. In the case of **Judicate Rumishael Shoo and 64 Others vs The Guardian Limited** (supra), the Court assigned meaning to the term **"argument"** as defined in *The Academics Legal Dictionary* to mean:

"a connected discourse based upon reason, a cause of reasoning tending and intending to establish a position and to induce belief."

and the word **"conclusion"** as defined in *A Concise Oxford Dictionary* to mean:

"1. The summing up of an argument or text

1. A judgment or decision reached by reason. "

And, in the same vein, concluded that:

"It is thus apparent that affidavit is supposed to contain statements which are true position of the matter or event. It should not contain anything based on reasoning."

Now, in light of the above excerpts, can it be said that paragraph 4 of the joint counter affidavit, is argumentative and, or contradictory? I am afraid the answer is negative for the following reasons: **First**, in paragraph 2 of

the affidavit supporting the petition herein, the petitioner deposed that he is a degree holder from the University of Tumaini – Makumira, with upper second class and currently a law student with registration number LST/2019/30/104. This assertion is contradicted by the deponent in the joint counter affidavit as thus:

" 4. That, the contents of paragraph 2 of the petitioner's affidavit are noted to the extent that he is a holder of the Bachelor Degree in laws from the University of Tumaini, Makumira – Arusha and the rest of the facts are denied. It is stated that the petitioner was a student of the School for the year 2019/ 2020, December intake. It is further stated that the petitioner is a candidate eligible to sit for supplementary examinations upon registration, and that his student status expired after one year of the programme."

Based on the face of the above depositions, I am at loss as to how the same is argumentative. It is obvious that the deponent thereof responded directly to the facts deposed by the petitioner. **Second**, the deponent in the joint counter affidavit is very clear in that the petitioner was a student in the 1st respondent's institution in 2019/ 2020 intake whereas the same is eligible to sit for supplementary examinations upon registration, as his student status expired after one year of the programme. This statement

cannot be said to be contradictory and, or invented fact. The deponent in the joint affidavit deponed matters in his own knowledge as the head of practical legal training. It is my considered opinion that the charge made by the petitioner in this respect is misconceived.

It was further charged by the petitioner that paragraphs 5 and 6 of the joint counter affidavit contain hearsay of the information which is within the knowledge of the 2nd respondent whose affidavit has not been filed. Before navigating the alleged deposition, I find it pertinent to revisit the petitioner's own depositions in paragraphs 8, 9 and 10 of the affidavit supporting the petition herein as under:

"8. That on 28th September, 2021 the decision on the said appeal was delivered in my absence, and that the appeal was dismissed without even being invited so as I can be heard or witness the process. Instead, I was served with a paper termed as the decision of an appeal that explained in short that the independent reviewers found that the marking by the Internal examiners were fair and there were no computation errors.

9. That on 07th October, 2021, the petitioner wrote the letter to be provided with answer scripts with their marking schemes for both LS 101 and LS 110 for first sitting examinations and with supplementary examinations and the details of the persons who acted as independent reviewers, for verification

if the marking in appeal and in supplementary examinations was fair and there were no computation errors.

10. That the petitioner's requests above on paragraph were denied by the respondents."

In response to above deposed facts, the deponent in joint counter-affidavit deposed as thus:

5. That the contents of paragraph 8 of the petitioner's affidavit are noted to the extent that on 28th September, 2021 the 1st respondent issued a decision on the petitioner's appeal vide a letter with ref. LST / 2019 /30/104/4 and that the said letter communicated the findings of the Independent Reviewers with regards to the alleged unfair marking, and the rest of the facts are denied.

6. That the contents of paragraphs 9 and 10 of the petitioner's affidavit are noted. It is stated that the respondents replied to the petitioner's request vide a letter dated 2nd November, 2021 with Ref. LSTR/2019/30/104/6 on the position of law and procedure regarding a candidate who is dissatisfied with the examination result."

Upon scrutiny of the depositions made by the deponent in response to the matters deposed by the petitioner, I refuse to subscribe to the petitioner's charge. As I earlier stated, the deponent above, in his position as the Deputy Principal of the 1st respondent and head of practical legal

training, could not be unaware of what has transpired between the petitioner and 1st respondent. Thus, it is my settled view that the same cannot be said to have deponed hearsay information. This charge, to my opinion, is misconceived as well.

Lastly, the petitioner made a general allegation that paragraphs 7, 8, 10 and 12 of the joint counter affidavit contain arguments, contradictions, opinions, extraneous matters and matters of law. The petitioner didn't state the particulars of the alleged arguments, contradictions, opinions, extraneous matters and matters of law in the joint counter affidavit filed hereto. Having gone through the depositions in the above mentioned paragraphs, I find that the deponent thereof responded categorically to the relevant facts deponed by the petitioner herein. Therefore, I find no reason to further belabour the allegation.

At this juncture, I proceed to canvass the 3rd point of preliminary objection in that the verification clause doesn't show which information was from the deponent own knowledge and which is from other sources contrary to Order VI, rule 15(2) of the CPC. This point of law need not detain me, as the discussions on the 1st and 2nd limbs of the preliminary objections dissolved the same. The provision of Order VI, rule 15 (2) of the CPC instructs that the person verifying the pleading shall specify what he

verifies on his own knowledge and, or otherwise on information received which he believes to be true. The deponent in the impugned joint counter affidavit has verified that the facts he deposed are true to the best of his knowledge. As rightly opined by the counsel for the respondents, the facts sworn by the deponent in the impugned counter affidavit, by virtue of his position, emanated from his own knowledge. I purchase this opinion wholesale. The 3rd preliminary objection is without substance as well.

In the last preliminary objection, it is contended that the joint counter affidavit filed herein deposes that the petitioner is not a student of the 1st respondent whereas to the contrary, in the previous cases (Reference No. 44 of 2021 and Misc. Civil Cause No. 12 of 2022) the respondents admitted the fact that the petitioner is still the student of the 1st respondent which amount to contradiction, if not perjury. This argument need not detain me as well. As correctly submitted by the counsel for the respondents, the above mentioned cases were registered in 2021 and 2022 whereas the petition herein was registered in 2023. It is obvious that, over time, the status of the petitioner in the 1st respondent has changed. The paragraph 4 of the joint counter affidavit filed herein, which I reproduced earlier, bears facts that the petitioner was a student of the school for the year 2019/2020, December intake. That the petitioner is a candidate

eligible to sit for supplementary examinations upon registration as his student status expired after one year of the programme.

Now, the question whether the petitioner is still a student of the 1st respondent or not, is a question of fact which may only be determined based on evidence adduced. That said, the 4th and last preliminary objection collapses as well.

In sum, I find the preliminary objections on point of law advanced by the petitioner herein bereft of substance. I hereby overrule the same in their entirety.

I so rule.

DATED at **DAR ES SALAAM** this 09th day of May, 2023.



A handwritten signature in blue ink, appearing to read "O. F. Bwego", is written over the printed name.

O. F. BWEGOGGE

JUDGE