

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL NO. 06 OF 2023

*(Originates from the District Land and Housing Tribunal for Rukwa at Sumbawanga
in Land Application No. 14 of 2022)*

ANNA MPENUKE.....APPELLANT

VERSUS

JOSEPH VISULO.....RESPONDENT

RULING

28th November, 2023 & 26th February, 2024

MRISHA, J.

The appellant, **Anna Mpenuke** unsuccessfully sued the respondent **Joseph Visulo** before the District Land and Housing Tribunal for Rukwa at Sumbawanga henceforth the trial tribunal, over a piece of land located at Kate Village within Sumbawanga District. Upon loosing thereat, she decided to approach the court with a petition of appeal containing two grounds of appeal namely:

1. That, the trial tribunal erred in law and fact by delivering judgment in favour of the respondent while the evidence pertaining to the

disputed land shows that the land was borrowed by the respondent since 2014 for cultivation of groundnuts.

2. That, the trial tribunal erred in law and fact by delivering judgment in favour of the respondent without considering the evidence adduced by the witness one Edward Visulo testified that since the year 1967 the father of the appellant one Atanazi Mpenuke was in use of the disputed land.

Subsequent to the filing of the present appeal, the respondent filed a Notice of Preliminary Objection with the following limbs: -

- i. That the appellant's petition of appeal is not properly verified in terms of Order VI, Rule 15 (1) of the Civil Procedure Code, Cap 33 R.E. 2019 (the CPC),
- ii. That, the appellant in the impugned petition of appeal has not specified by reference to the numbered paragraphs of his petition what she verifies as being from his own knowledge and what she verifies upon information received and believed to be true.

Practically, the filing of such preliminary objection had to be heard and determined first. The matter was heard by way of written submissions and despite being legally unrepresented, both parties acquired some

legal aids and complied with the order of the court dated the 09.08.2023.

Through his written submission in support of the first limb of preliminary objection, the respondent submitted that the matter before the court is an appeal against the impugned decision of the trial tribunal, is incompetent before the court for offending the provisions of Order VI, Rule (1) of the CPC by containing hearsay evidence.

He also averred that it is a trite law that where petition of appeal is made on information, it should not be acted upon by any court unless the sources of information are specified. Unfortunately, this proposition was not backed up by any authority.

As for the second limb of his preliminary objection, it was his view that the petition of appeal filed with the court contains no verification clause hence offended the provisions of Order VI, Rule 15 (2) of the CPC. In stressing the above second point, the respondent argued that the provisions of Order VI, Rule (2) of the CPC requires the person verifying to specify by reference to the numbered paragraphs of the pleadings what he/she verifies according to his/her own knowledge and what he/she verifies according to information received by him/her and believe to be true.

He argued that the petition of appeal in the present case shows no verification by the appellant in all paragraphs while in her second ground of appeal the appellant has mentioned a person called Edward Visulo whose evidence as per the trial tribunal records, does not bear out the appellant who claimed that the said person testified that he did not witness the respondent borrowing the disputed land from the appellant.

Based on the above provisions of the law and arguments, the respondent invited the court to consider as a settled law that if the verifier had received information from other sources, he/she must disclose the said sources and failure to disclose those sources renders the petition of appeal defective as a result, the entire appeal becomes incompetent.

At this time, the respondent cited various cases to support his argumentation, including the case of **Paul Makaranga vs Republic**, Criminal Application No. 3 of 2010 and **Lisa E. Peter vs Al-Hushoom Investment**, Civil Application No. 147 of 2016 in which the court quoted with approval the Indian case of **A.K.K Nambiar v. Union of India** (1970) 35 Cr. 121 and proceeded to emphasize that the verification clause is one of the essential ingredients of any pleadings

which must show the facts the deponent asserts to be true of his own knowledge and those based on information or beliefs.

As if the above was not enough, the respondent referred the court to the case of **Anatol Rwebangira vs The Principal Secretary, Ministry of Defence and National Service and Hon. Attorney General**, Civil Application No. 548/04 of 2018 where according to him, it was stated that,

"Where averment is not based on personal knowledge, the source of information should be clearly disclosed."

And, in connection to the present case, the respondent submitted that the appellant's petition of appeal contains both the information which is to the best of her knowledge and that which was received by her from the third party, as it can be observed at paragraph 2 of the said petition.

To illustrate his point more, the respondent cited the case of **Zera Kateti vs Baraka Malima and 2 Others**, Land Appeal No. 25 of 2021 where it was held that,

"Since in the present appeal the appellant failed to show good cause as to why the dismissal order is to be set aside, I find the appeal is standing dismissed with no order as to costs."

In conclusion, the respondent submitted that since in the present appeal the appellant has failed to show good cause as to why the civil application should not be dismissed, it was his prayer that the same be dismissed with costs.

The appellant's reply to the presented preliminary points of objection was very brief. First, she admitted that the objection contains purely points of law. Secondly, she submitted that like in the pleadings, the defects detected on the petition of appeal may be rectified by the order of the appellate court that the party whose documents are defective be allowed to amend them.

In other words, the appellant submitted that the omission to sign or verify a plaint is not a defect that would lead to nullification of a pleading or affect the jurisdiction of the court. To bolster that proposition, the appellant cited the cases of **Trans gem Trust vs Tanzania Zoisite Corp Ltd** (1968) HCD No. 501 and **Nyosta Peter Kabezi Mborowe T/A Nyudia Enterprises and 3 Others**, Civil Case No. 153 of 2019 (HCT at Dar es Salaam).

Finally, the appellant submitted that the arguments made by her counterparty are matters of technicality which the court is not supposed

to be tied up with, as provided under Article 107 A (2) (e) of the Constitution of the United of Tanzania, 1977 (the URT Constitution).

She also referred the court to the provisions of Order VI, Rule 17 of the CPC which empowers the court at any stage of the proceedings to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. She thus, prayed to the court to grant any possible order in order that the matter can reach to its finality.

In rejoinder, the respondent submitted that the defects on the appellant's petition of appeal, as he has pointed out in his submission in support of his preliminary point of objection, are not minor or mere technicalities, but are fatal and call for the petition of appeal to be dismissed.

He further argued that it is established principle of law that failure to put verification clause in a petition of appeal is fatal. Again, this argument was not supported by any authority. He also contended that the present is an appeal, not a civil suit as it has been referred by the appellant; hence, her arguments are irrelevant to the circumstances of the matter at hand.

In addition to the above argument, the respondent submitted that the court cannot wear the shoes of the appellant in order to correct her

petition of appeal which was wrongly prepared. He made reference to Rule 5 of The Civil Procedure Code (Approved Forms) (Amendment) Notice, 2022 GN No. 355, published on 20.05.2022 which provides a definition of the term "*Verification*".

As he was about to windup his rejoinder submission, the respondent referred the court to the case of **Salima Vuai Foum vs Registrar of Cooperative Societies and Three Others** (1995) TLR 75 which refers to defective affidavit and submitted that the above authorities he had cited, show that a defective clause deserves to be rejected and he invited the court to find that the present appeal has no merit and proceed to dismiss it with costs.

Having read the above rival parties' submissions, the impugned petition of appeal together with a number of authorities cited therein, I will therefore proceed to determine whether the raised preliminary objection has merit.

It is a well-known position of the law that a preliminary objection raises a point of law which if upheld, disposes of the suit and saves the time of the court and of the parties by not going into the merits of the application as the point of law disposes of the matter summarily; see

Eusto Ntagalinda vs Tanzania Fish Process Ltd, MZA Civil Application No. 8 of 2011 (CAT at Mwanza, unreported).

The respondent has implored me to uphold his preliminary point of law on two points; **first** that the appellant's petition of appeal is not properly verified in terms of Order VI, Rule 15 (1) of the Civil Procedure Code, Cap 33 R.E. 2019 (the CPC) and **second**, that the appellant in the impugned petition of appeal has not specified by reference to the numbered paragraphs of his petition what she verifies as being from his own knowledge and what she verifies upon information received and believed to be true.

To the appellant, it is her contention that those are matters of technicalities which the court is not supposed to be tied up with and the remedy to any detected defect, is for the court to allow the appellant to amend them.

On my part, I have no qualm with the respondent's argument that the above two limbs from which his preliminary objection is pegged on, are purely points of law and therefore his qualifies to be treated as the preliminary objection. However, the issue is whether the petition of appeal emanating from land cases is a pleading and therefore supposed to be verified.

This is indeed the centre of contention between the parties in this case who appears to have regarded the petition of appeal as a pleading. The meaning of the term Pleading is not farfetched as it is provided under Order VI, Rule 1 of the CPC and by various text books.

For instance, under Order VI, Rule 1 of the CPC, the term pleading is defined as follows: -

"Pleading means a plaint or a written statement of defence (including a written statement of defence filed by a third party) and such other subsequent pleadings as may be presented in accordance with rule 13 of Order VIII"

Therefore, by virtue of the above provisions of the law, the term pleading means a plaint, a written statement of defence, a written statement filed by a third party and other subsequent pleadings which are the set-off and a counter claim, as provided under Rule 13 of Order VIII of the CPC.

Also, according to the **Blacks' Law Dictionary**,⁴ Edition at page 1311, the term pleading has been defined to mean,

"The process performed by the parties to a suit or action, in alternately presenting written statements of their contention, each

responsive to that which precedes, and each serving to narrow the field of controversy, until there evolves a single point, affirmed on one side and denied on the other, called the "issue," upon which they then go to trial.

The act or step of interposing any one of the pleadings in a cause, but particularly one on the part of the defendant; and, in the strictest sense, one which sets up allegations of fact in defense to the action."

Up to that moment, it is crystal clear that pleadings are limited to the plaint, written statement of defence, the set-off and counterclaim. Their meaning is as provided above. Hence, it is not correct to treat a petition of appeal as one of the pleadings. It is only pleadings which are supposed to be verified at their foots and signed by the party or his advocate.

The above court's position is fortified by the provisions of Order VI, Rule 14 and 15 of the CPC. For example, Rule 14 of Order VI of the CPC provides that,

"14. Pleading to be signed

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 the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf” [Emphasis supplied]

And, Rule 15 (1) and (2) of Order VI of the CPC provides that,

“(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verified upon information received and believed to be true.” [Emphasis supplied]

From the above provisions of the law, it is apparent that verification is only required in the drafting of pleadings. Thus, based on the reasons which I have endeavoured to assign above, I am of the settled view that the preliminary objection raised by the respondent is unmerited.

Consequently, the said objection is dismissed for want of merit with no order as to costs.

Regarding the prayer of amendment presented by the appellant, I see no base on it since I have pointed before that this matter is not about pleadings, rather it is about questioning the competence of a petition of appeal which I have found to be properly drafted. Hence, each party should prepare himself to come and argue for and against the grounds of appeal on the hearing date to be fixed shortly by the court.

It is so ordered.



A.A. MRISHA
JUDGE
26.02.2024

DATED at **SUMBAWANGA** this 26th day of February, 2024.



A.A. MRISHA
JUDGE
26.02.2024