

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 368 OF 2023

KISHEN M. KANABAR..... APPLICANT

VERSUS

SARAH JOHN MBEPORESPONDENT

RULING

22nd June, 2023 & 11th July, 2023

L. HEMED J.

By way of Chamber Summons filed on 16th June 2023, the applicant seeks for an order to maintain *status quo* in respect of a piece of land known as Plot No. 17/888 Yatch Club Road, Masaki Dar es Salaam, Tanzania. The application is pursuant to sections 68 (e), 95 and Order XXXVII Rule 2 (1) of the Civil Procedure Code, [Cap 33 R.E 2019] and supported by an affidavit deposed by the applicant.

On 22nd June 2023 the respondent filed her counter affidavit to challenge the application. Through her advocate one Stanley Nyamle, she also lodged Notice of Preliminary Objection which is the subject of

this Ruling. The preliminary objection comprised of three limbs as follows :-

- 1. The applicant's affidavit is contains defective verification clause.*
- 2. The affidavit supporting the application which contain defective Jurat.*
- 3. The affidavit of the applicant contains assumptions, hearsay, and opinion.*

The preliminary objection was argued by way of written submissions, which were promptly filed. **Mr Revocatus Thadeo Mathew**, learned counsel argued on behalf of the applicant while the respondent enjoyed the services of **Mr. Stanley Nyamle** learned counsel.

In his submission in support of the first limb of preliminary objection, **Mr. Nyamle** stated that the application is incompetent for being accompanied by an affidavit with defective verification clause. He elaborated that paragraphs 4 and 7 of the affidavit contain matters, which the applicant failed to state that the source of information was from Mr Alex Mpepo. To bluster his arguments, he referred to the case of **Jacqueline Ntuyabaliwe Mengi and 2 others vs Abdiel Reginald Mengi**, Civil Application No 332 of 2021 (unreported), whereby the applicants failed to disclose the source of information and

thus rendered the verification clause of the affidavit defective. He also referred to the case of **Anatol Peter Rwebangira vs The Principal Secretary, Ministry of Defence and National Service & Another**, Civil Application No. 548 /04 of 2018 (unreported) and **Salma Vuai vs Registrar of Cooperatives and 3 others** [1995] TLR 75.

Moreover, Mr. Nyamle asserted that the numbering of paragraphs in the affidavit are not clear as there are two paragraphs with No. 8 and two paragraphs with No. 9 which provide different facts. Submitting on the 2nd limb of the preliminary objection, the learned counsel for the respondent stated that the jurat of attestation is also defective as the attesting officer failed to state on how he came to know the deponent. This contravenes the mandatory requirement of section 10 of the Oath Statutory Declaration Act [Cap 34 RE 2019]. He cited the case of **Waziri Bukuku vs Halima Kondo**, Misc Land Application No. 91 of 2018 (HC Land Division (unreported) to support his assertion. Mr Stanley prayed the court to strike out the application with costs.

In reply thereto, Mr Mathew refuted that there is nothing wrong with the said paragraphs of the affidavit. He elaborated that the deponent has the knowledge of the facts and he can prove them. He was of the

view that since the defectiveness is not in all paragraphs, the court may expunge paragraphs that are defective and salvage the application.

He further submitted that the case of **Jacqueline Ntuyabaliwe** (supra) is distinguishable to this case as the cited case has different facts. In the cited case almost all paragraphs were defective compared to this case whereby paragraphs 6, 7, 8, and 9 are the only which are defective and are not the foundation of the application.

With regard to the second limb of the preliminary objection, Mr Mathew submitted that the double 8 and 9 paragraphs is a typographical error. He was of the view that the said paragraphs should be expunged from the affidavit. He cited the case of **Phanton Modern Transport I985 Limited vs D.T Doble Tanzania Limited**, Civil Reference No 15 of 2001 and the case of **Jamal Mkumba& another vs Attorney General**, Civil Application No. 240/ 01 of 2019, to support his argument.

On the defectiveness of the jurat clause, he was of the view that it can be cured by the overriding objective principle. He cited the case of **Donati kyevecho vs Hussein Mkumba**, Misc Land of 2022 HC Morogoro and the case of **Lazaro Bajuta & 18 others vs Daniel Awet Tewa**, Misc. Land Application No. 97 of 2021 to cement his point. Lastly, he prayed the preliminary objection to be overruled with costs.

Having gone through the rival submissions, my task is now to determine as to whether the preliminary objection is meritorious. I have opted to start with the 1st limb on the defectiveness of the verification clause. In the case of **The Director of Public Prosecutions vs Dodoli Kapufi and Another**, Criminal Application No 11 of 2008 the Court stated the essential ingredients of valid affidavit which include :

"(i) the statement or declaration of facts etc by the deponent;

(2) the verification clause;

(3) a jurat; and

(4) the signatures of the deponent and the person who in law is authorized either to administer the oath or to accept the affirmation. "

From the above ingredients, it is obvious that an affidavit must be verified by the deponent on what is true based on personal knowledge, belief or information. The deponent is obliged to disclose the source of information other than that of own knowledge. I have examined the affidavit in question and for easy of reference, I have found it appropriate to reproduce the relevant paragraphs hereunder: -

4. That, in February 2023 *the Respondent through her son Mr Alex Mbepo called the applicant and told him that the family want to sell the suit premises and asked if the Applicant could help*

to find a suitable buyer and the Respondent further promised that if they manage to get a serious buyer the Applicant will be given 12months to continue staying on the premises undisturbed, the proposal which was accepted by the Applicant.

7. That, the Applicant when asked the Respondent through the Respondent agent who is the Respondent son Alex Mbepo why he has contradicted his verbal agreement, he profusely apologized and told the Applicant that it was not him but his older brother that was interfering into family affairs and that he had some internal family conflicts but the Applicant should not worry everything will be fine and the he assured the Applicant that they will give the Applicant resolution by the end of April 2023 informing him on whether first they still intend to sell the house, second they want to raise rent, three cancel the Applicant's lease of the remaining 5 years with the option to extend for only 12months to pay the way for the prospective buyer.

8. That, since then the Applicant has been making follow-up to the Respondent and Respondent agent. The Applicant was informed and assured to not worry about the lease renewal as everything will be fine.

9. That, since the past three weeks the Respondent stopped communication with the Applicant and has been treating him like never had nor does he have any business relations that required a mutual attention. The Respondent has put the Applicant in a dilemma thereby affecting the Applicant's business plans, investments and operations.

8. That, the Applicant relying on the promise of the Respondent to renew the lease agreement for other 12 months, developed the suit premises by putting on the modern infrastructures purposely for investment and subleasing.

*9. That, Respondent's refusal or neglect to honor his promise to renew the lease agreement for 12 months amounts to breach of promise with fraudulent intention at the expense of rights and interest of the Applicant.”
(Emphasis added)*

Then, the verification clause of the affidavit in question reads as follows:-

*"I KISHEN M. KANABAR verify that what is stated paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 hereinabove is true to the best of **our** knowledge and belief” (emphasis added).*

Having examined the paragraphs and verification clause, I realized that the deponent has stated that all information in all paragraphs are true to the

best of “their” own knowledge while the facts stated in paragraphs 4 and 7 are not based on the knowledge of the deponent. Additionally, the word ‘**our**’ in the verification clause means that the information verified is based on the knowledge of the person verifying the contents of the affidavit and other person not mentioned in the affidavit. In the present affidavit, the said other persons purporting to have knowledge of what has been verified by the deponent are not known. It is trite law that the person verifying the content of the affidavit must be the one who deposed it. In the instant case, the other persons purporting to verify the affidavit with one *KISHEN M. KANABAR*, are not deponents. This fact in deed renders the verification clause defective altogether.

Additionally, paragraphs 4 and 7 of the affidavit contain the information the deponent got from one Mr Alex Mpepo. Such information is not based on own knowledge of the deponent. However, this truth has not been reflected in the verification clause. I am thus at one with Mr. Nyamle that failure to state the source of such information in the verification clause is fatal as it renders the verification clause defective. Defectiveness in the verification cannot be cured even by the overriding objective principle.

Having found the verification defective, I find no need of determining the other limbs of the preliminary objection as is sufficient

to dispose of the Application. I am holding so because defectiveness of the verification clause renders the entire affidavit defective. Accordingly, the entire application is thus struck out with costs.

DATED at **DAR ES SALAAM** this 11th of July 2023.



L. HEMED
L. HEMED

JUDGE