

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 718 OF 2023**

**JUMA YUSUPH MSUMI ..... APPLICANT**

**VERSUS**

**IMELDA CELESTINE BULYOTA ..... RESPONDENT**

**RULING**

**06 & 20/03/2024**

**GWAE, J.**

The applicant herein has applied for the certificate on point of law to sanction determination of her appeal by the Court of Appeal of Tanzania following his grievances of the decision of this court (**Hon. Luvanda, J**) in Misc. Land Appeal No.40 of 2023. The application has been brought under section 47 (3) of the Land Disputes Courts Act, Cap 216 R. E. 2019 and section 5 (2) (c) of the Appellant Jurisdiction Act Cap, 141 R. E, 2019.

It should be noted that, the hearing proceeded by way of written submissions. Captain Ibrahim Mbiu Bendera, the learned senior advocate represented the applicant whereas Mr. Ray Gamaya, learned advocate, represented the respondent.

In the cause of filing of his reply to the applicant's written submission, the respondent's counsel raised two points of objection, which is to the effects that:-

1. The applicant moved the Court to grant the application under a wrong provision of the law.
2. The application is supported by a defective Affidavit which contains incurable defective verification clause".

Due to the reasons that, will be enumerated shortly, I will start with the second point of objection. Mr. Gamaya for the respondent submitted that, the affidavit supporting the application contains incurable defective verification clause. He stated that, paragraph 11, 12, 13 and 14 of the applicant's affirmed affidavit in support of the application are worthless for consideration for, they have not been verified to the truthfulness of the facts contained therein to align with the principle of valid affidavit for consideration by the court.

Bolstering his arguments, he referred to the case of **Lisa E. Peter vs. Al- Hushoom Investment**, Civil application No.147 of 2016, TZCA, **Anatol Peter Rwebangira vs. Principle Secretary of Defence & National Service**, Civil Application No. 548 of 2018, TZCA 106 at page 10 and 11, **Rhoda Mwasifinga vs. The Manager NBC Bank & Others**,

Misc. Land Application No.65 of 2017, TZHC 389 at page 7 and **Marco Kimiri & Others vs. Naishoki Eliau Kimiri**, Civil Appeal No. 39 of 2012, TZCA at page 7. He finally argued that, this application being supported with a defective affidavit, which cannot stand, should be dismissed with costs.

Admittedly, in his rejoinder containing a reply to the 2<sup>nd</sup> limb of objection thereof, Mr. Bendera argued that, by removing three paragraphs of their affidavit for the typing mistakes of not being included in the verification does not make the grounds of the application to disappear. He stated that, paragraphs 2, 3, 4 5 and 10 are all showing facts on the utmost seriousness of the illegality of the Kunduchi Ward Tribunal decision.

Having considered the rival submissions made by the counsels for both parties, the issue for determination is whether the 2<sup>nd</sup> point of objection raised has merit. The most famous case of **Mukisa Biscuits vs. West End Distributors** (1969) EA 696 defines the preliminary objection as the legal issue (s) raised by any party to a suit, which requires Court's determination before proceeding to the main case or application. It has to be a pure point of law and not otherwise. In the instant matter, the issue

raised by the respondent qualifies to be a point of preliminary objection as it is based on a pure point of law.

The essential ingredients of any valid affidavit were elaborated in the case of **DPP vs. Dodo Kapufi**, Criminal Application No.11 of 2008 (Unreported) to include;-

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

*(ii) A verification clause*

*(iii) A jurat and;*

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

Furthermore the purpose and importance of a verification clause was laid down in **Lisa E. Peter vs. Al-Hushoom, Investment** (Supra) at page 8, while citing with approval the case of **A.K.K Nambiar vs. Union of India** (1970) 35 CR 121, thus:-

*"The reason for verification of affidavits are to enable the court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to information received from persons or allegation may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegation.*

*In essence, verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the absence of proper verification, affidavits cannot be admitted in evidence."*

In the instant matter, the affidavit in support of the application contains 14 paragraphs. In the verification clause, only 10 paragraphs were stated to be true to the applicant's knowledge. The rest of the paragraphs were not verified. For the purpose of clarity, the verification clause subject of this objection is hereby reproduced:-

**VERIFICATION**

*"I, Ibrahim Mbiu Bendera, adult, Muslim and resident of Dar es Salaam DO HEREBY verify that what is stated above from paragraph 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 are true to the best of my knowledge and understanding of the law."*

Looking at the verification above, paragraph 11, 12, 13 and 14 of the affidavit supporting the application were plainly not verified as rightly raised and conceded by the counsel for the respondent and applicant respectively. As it can be gleaned from the affidavit supporting the application, the unverified paragraphs are the cornerstone of the application containing a copy of the Notice of Appeal subject of this application and the demonstration of the point of law, which the applicant

seeks for determination. The applicant was of the view that, even if paragraphs 11, 12, 13 and 14 of the applicant's affidavit are expunged, the rest of the paragraphs can stand to prove utmost seriousness of the illegality of the Kunduchi Ward Tribunal's decision. However, in the case of **Rhoda Mwasifinga vs. the Manager NBC Bank & Others** (Supra), it was stated thus:-

*"In the case of Mantrack Tanzania Ltd vs Raymond Costa, Civil Appeal No.11 of 2010 (CAT-Mwanza, unreported) the Court ruled that an affidavit intended to be used in judicial proceedings should, among other things, be properly verified. It follows therefore that the requirement to properly verify is set as a mandatory requirement under the law. Under the circumstances therefore the overriding objective cannot be invoked."*

Guided by the above authority, this court is of the increasingly opinion that, the affidavit which is incurably defective is the same as no affidavit at all. Since the application has to be instituted in the Court by way of chamber summons supported by an affidavit, this application cannot be determined by the chamber summons alone. More so, since an application for certificate on point (s) of law to enable the applicant, there must be first notice of appeal filed to the Court of Appeal of Tanzania

before filing of an application of this nature as required under Rule 46 of the Court of Rules of Tanzania, which reads;

*"46 (1) Where an application for a certificate or for leave is necessary, it shall be made after the notice of appeal is lodged".*

Similarly, there should be demonstration of a point of law that has to be ascertained by the court by the applicant. Hence, the point (s) of law shown in the applicant's affidavit but not verified that, which is equal nothing like demonstration of point (s) of law. In the absence of the said crucial or vital requirements of the law, such application must be fatally defective in the eye of the law.

It therefore follows that, this application is incompetent for being accompanied with the affidavit, which bears the defective verification clause. The finding in respect of the 1<sup>st</sup> limb of objection would suffice to dispose of the applicant's application, thus, needless to belabor on the 1<sup>st</sup> point of preliminary objection. However, I find it pertinent that I should briefly respond to it, it is common ground that, procedural law operates retrospectively as rightly argued by the learned senior counsel for the applicant.


In our instant application, the applicant lucidly and correctly cited the repealed provision of the law that is section 47 (3) of the Land Disputes' Act, Cap 216, Revised Edition, 2019 whereas the same was amended by section of the Legal Reform Sector Law (Miscellaneous Amendments) Act No. 11 of 2023. I am not persuaded if by citing section 47 (3) now section 47 (2) of the Act renders the application incompetent since this application was filed on days of October 2023 that means prior to the enactment of Act No. 11 of 2023, which was published on 1<sup>st</sup> December 2023. Likewise, with introduction of the principle of overriding objective in 2018 via No. 3) Act, No. 8 of 2018, this sort of objection, wrong citation of subsection complained of, cannot render the application incompetent subject to be struck out.

Consequently, I sustain the 2<sup>nd</sup> point of preliminary objection raised by the respondent's counsel and I accordingly strike out the incompetent application with costs.

It is so ordered.

**DATED at DAR ES SALAAM this 20<sup>th</sup> March 2024**



  
**M. R. GWAE**  
**JUDGE**