

TANZANIA / JUDGMENT

Baraka Jackson Nsinde RULING

COURT
TANZLII

DECIDED
29 November 2024

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IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA MISC. CIVIL APPLICATION NO. 17148 OF 2024 (Arising from Misc. Land Appeal No. 34 of 2023 in the High Court Mwanza Sub-Registry) BARAKA JACKSON NSINDE.....APPLICANT VERSUS CLETUS DEUSDEDITH MALIGANYA.....RESPONDENT

RULING

28th October & 29th November 2024 KAMANA, J. This Court is being moved by the applicant to determine the application for an extension of time for re-admission of Misc. Land Appeal No. 34 of 2023 which was dismissed for want of prosecution by Robert, J. on 16th October, 2023. On the course of the hearing, a notice of preliminary objection was raised by the respondent's learned Counsel who prayed this application be struck out with costs on the following grounds:

1. That the application is bad in law for being supported by an incurably defective affidavit that contains hearsay, arguments and conclusion.
2. That the application is bad in law for being supported with an incurably defective affidavit for having a defective verification. 1 The preliminary objections were argued by way of written submissions. The applicant was represented by Mr. George Alfred, learned Counsel. The respondent has the services of Mr. Iche Mwakila, learned Counsel. Mr. Mwakila submitted in support of the first preliminary objection that paragraphs 2, 3, 4, 5, 6, 10, 11 and 13 of the affidavit contain extraneous matters regarding the illegalities of the lower court's decision. Amplifying, the learned Counsel contended that the said paragraphs offend the established principle that an affidavit should not contain prayers, legal arguments or conclusion. Strengthening his arguments, he relied on the cases of Uganda Commissioner of Prisons, Ex Parte Matovu [1966] 1 EA 514 (HCU) and Abel Lohay Slaa v. Simon John Quwanga and Another, Misc. Land Application No. 176 of 2022. Mr. Mwakila continued to augment his argument by contending that in paragraphs 4, 5 and 6 of the affidavit, the deponent despite alleging to have received information from this court's registry officer Josephine and the registry officer of the Resident Magistrate with extended jurisdiction at the Resident Magistrate's Court of Geita, none of them sworn an affidavit to prove what was alleged by him. He added that the verification so far as 2 those paragraphs is concerned is defective as the deponent verified that the information contained therein is true from his knowledge

while in essence are hearsay. Submitting on the second preliminary objection, Mr. Mwakila argued that Order XIX Rule 3(1) of the Civil Procedure Code, Cap 33 [RE.2019] entails an affidavit to be restricted to the facts that the deponent can prove on his knowledge. He augmented that contrary to Order XIX Rule 3(1) of the Code, the deponent verified information he received from other persons as true from his knowledge. He invited this court to consider the cases of *Anatol Peter Rwebangira v. The Principal Secretary, Ministry of Defence and National Service and Another*, Civil Application No. 548/04 of 2018 and *Jacqueline Ntuyabaliwe Mengi and 2 Others v. Abdiel Reginald Mengi and 5 Others*, Civil Application No. 332/01 of 2021. In reply to the first preliminary objection, Mr. Alfred contended that the basic rule on the facts that can be said to be proved on the affidavit can be allegations that may be true from information received from persons or may be based on records. Based on that, he contended that the allegations found in paragraphs 4, 5 and 6 were from the court officials 3 which were relayed to him. Concerning the contents of paragraphs 2,3,10,11 and 12, Mr. Alfred argued that the applicant was only trying to point out the illegalities that are on the face of records to substantiate a good cause for extension of time. As to the second point of objection, Mr. Alfred argued that although the applicant in his affidavit verified to have some information from his advocate, he admitted that other sources of information were not indicated and prayed this court to order amendment or strike out the pleadings in accordance to Order VI Rule 16 of the Code. He argued that the same position was held in various cases including *Sanyou Service Station Ltd*

- v. *B.P Tanzania Ltd, (Now Puma Energy (T) Ltd)*, Civil Application No. 185/7 of 2018 and *Jamal S. Mkumba and Another v. Attorney General*, Civil Application No.240/01 of 2019. Rejoining, Mr. Mwakila reiterated his submission in chief. Having gone through the submissions and the case laws cited to me, the main issue for determination is the validity of the affidavit deposed by the applicant and its consequences. As stated above, the learned Counsel for the respondent pointed out the irregularities in the applicant's affidavit. Taking a look at the said affidavit specifically paragraphs 2, 3, 10, 11 4 and 12, it is my considered view that such paragraphs are offensive as they contain arguments and conclusions. The remaining paragraphs are also defective as paragraphs 4, 5 and 6 indeed contain information that is not from the deponents' knowledge and the same was not sworn upon by either of the informants. It is trite law that an affidavit that contains information relayed to the deponent by another person is hearsay unless the informant swears an affidavit. See: *Sabena Technics Dar Limited v. Michael J. Luwunzu*, Civil Appl. No.451/18 of 2020; and *Franconia Investment Ltd v. TIB Development Bank Ltd*, (Civil Application 270 of 2020). That being the case, I sustain the first preliminary objection and since it disposes of the application, I see no reason to determine the second preliminary objection. The application is struck out with costs. Order accordingly. DATED at MWANZA this 29th of November, 2024. KS KAMANA
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