

TANZANIA / JUDGMENT

Ruling CHARLES MARWA v VIOLET S CHUWA and 5 others

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA LAND CASE NO. 37 OF 2024 CHARLES
MARWA.....PLAINTIFF VERSUS VIOLET SISTY
CHUWA.....1st DEFENDANT BONIPHACE NGILI
SAYI.....2nd DEFENDANT MISUNGWI DISTRICT
COUNCIL.....3rd DEFENDANT COMMISSIONER FOR
LANDS.....4th DEFENDANT REGISTRAR OF
TITLES.....5th DEFENDANT ATTORNEY
GENERAL.....6th DEFENDANT

RULING

5th July & 16th August, 2024. ITEMBA, J. The 3rd to the 6th defendants herein have raised 2 points of preliminary objections that:-

1. The plaint is bad in law contravening the mandatory provision of Order VI Rule 14 of the Civil Procedure Code and
2. For containing verification clause which is defective and contravenes Order VI Rules 15(2). The objections were argued by way of writing. Mr. Lameck Milumbe, SA quoted Order VI rule 14 and submitted that; in terms of Section 53(2) of the interpretation of the Laws Act Cap. 1 RE 2019 when the word 'shall' is used in conferring function, such function must be performed. He cited the Court of Appeal decision in Bensons Enterprises Ltd Vs. Mire Artan 1 (Civil Appeal 26 of 2020) [2022] TZCA 777 where it was held that pleadings must be signed and verified in terms of Order VI Rules 14 and 15 and that pleadings include plaint. He expounded further that, in the present suit, the plaint was signed only by the plaintiff who is just the party but not by his advocate Mr. Steven Kitale Cleophace who drew and filed the plaint. That, it is a legal requirement that in case where the party has an advocate both the party and his advocate are required to sign the pleadings, and the failure by the advocate to sign the plaint as the law directs renders the plaint defective. That order VI Rules 14 (supra) which is couched in mandatory terms and cannot be overridden by the principle of overriding objective (oxygen principle) as it was observed by the Court of Appeal in the

decision of Mondorosi Village Council & Other v. Tanzania Breweries Ltd & Another, Civil Appeal No. 66 of 2014 unreported. Regarding the second ground of objection, he submitted that the verification clause is defective as it contravenes Order VI Rules 15(2) which requires the person to verify facts of his own knowledge and those facts obtained upon information received and believed to be true. That, the 2 plaintiff in the verification clause verified the statement made in paragraph 13 of the plaint as true to the best of his knowledge. ‘in an earnest exercise of his rights, the plaintiff, in accordance with section 98(1) and (2) of the Land Registration Act, Cap. 334 of the Laws of Tanzania Revised Edition, 2019 duly applied...” That, the plaintiff being an individual residing and employed within Mwanza it cannot be said that he knew the law to the extent of knowing Section 98(1) and (2) of Cap. 334 of such information must have been obtained from the lawyer and therefore the plaintiff was required to verify the source of that information because that information could not have been in his knowledge. That, according to Basons Enterprises Ltd v Mire Artan (supra) violation of Order VI Rule 14 and 15 vitiates the whole suit. He finally prayed for the court to struck out the suit with costs. Responding, Mr. Steven Kitale Cleophae submitted that although the defendants contends that the plaint is defective for not complying with the mandatory provisions of Order VI Rule 14 of the Civil Procedure Code Cap. 33 R.E 2019, is important to consider the context and judicial discretion provided in the cited cases. That, the provisions of Order VI Rule 14 allows flexibility that where a party is unable to sign the pleading, it may be signed by any person duly authorized by them. That, the intent 3 is to ensure that procedural requirements do not unduly hinder the administration of justice. He added that with regard to the cited case of Basons Enterprises Ltd Vs. Mire Artan (supra) while it is true that the Court emphasized on the importance of compliance with procedural rules, it did not indicate that non-compliance necessarily results in automatic dismissal but the court highlighted the need for pleadings to be properly signed and verified to ensure the integrity of the legal process. That, the plaint was signed by the plaintiff, and there was no deliberate intention to contravene the provisions of Order VI Rule 14 because the omission by the advocate was an oversight, and it does not fundamentally affect the substance or merits of the case. He supported his argument with the case of Transgem Trust Vs. Tanzania Zoisite Corp Ltd

- (1968) HCD 501, which states that procedural defects related to signatures can be cured through amendments and Hilde Happy Lymo V. Gingo Real Estate Ltd (Land Case No. 363 of 2023) (2024TZHC where the court recognized that procedural omissions, such as missing signatures, do not render pleadings void but can be rectified. He finally insisted that in the present situation, oxygen principle can be relied to cure procedural 4 defects and facilitate the fair administration of justice. He cited the cases of Yuko Enterprises (E.A) Ltd & Another Vs. M/S Maxinsure (T) Ltd & Another (Commercial Case 30 of 2021) [2022] TZHCComD 2&2 (24 May, 2022 TANZLII. He also referred to Sarkar’s Law of Civil Procedure, 8th edition Vol. 1 at page 621 where it was stated that;- signing is merely a matter of procedure so it is immaterial whether it is signed by him or someone else on the plaintiff’s behalf and Mulla on the Code of Civil Procedure, 15th edition, volume III at page

1172 who explains that;- The signing of a plaint is merely a matter of procedure. If a plaint is not signed by the plaintiff or by a person duly authorized by him in that behalf, and the defect is discovered at any time before judgment, the court may allow the plaintiff to amend the plaint by signing the same... That omission to sign or verify a plaint is not such a defect as could affect the merits of the case or jurisdiction of the court. In response to the 2nd ground of objection, he submitted that this argument is based on a selective and incomplete reading of paragraph 13 of the plaint, which distorts the actual content and intent of the verification. That, order VI Rule 15(2) of the CPC Civil Procedure Code state: "The person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true" He expounded that this paragraph illustrates that the plaintiff was exercising his rights under the law, and the facts stated pertain to his personal actions and observation, which he is fully competent to verify. That, the Defendant's attempt to isolate a portion of this paragraph to argue that the plaintiff should have indicated the source of information is misleading and unjustified. That, the plaintiff has specified his personal knowledge of the facts, as required by Order VI Rules 15(2) and this includes the actions he took in exercising his rights, and these are all within his personal knowledge and experience. He stressed that determination of whether the person who verified the plaint had knowledge of all matters would involve the requirement of evidence, thus eliminating the elements of being a preliminary objection on a pure point of law. He supported his submission by Attorney General & Others Vs. Milanga Hamka & 40 Others (Land Case 26 of 2022) [2023 TZHC 17942 (15 June, 2023) TANZLII: He added that, if the verification is defective, it is not fatal to the extent of rendering the suit invalid, as guided by the overriding objective principle which considers procedural defects including issues of verification as curable by amendment without causing injustice to the parties. He relied on Philip Anania Masasi Vs. Returning Officer of Njombe, North Constituency and Others, Civil Cause No. 7 of 2995 (unreported). He submitted that the verification clause is proper and in accordance with order VI Rule 15(2). The Defendant's objections are based on an incomplete and misleading reading of the plaint, he urged the court to dismiss the Defendant's objection and allow the case to proceed on its merits. He finally prayed for the court to dismiss the preliminary objection and permit the plaintiff to amend the plaint by including the advocate's signature. I have considered the parties' submissions in respect of the preliminary objections. Based on the landmark case of Mukisa Biscuits Manufacturers Ltd Vs. Western Limited (1969) EA 697 it is trite law that a preliminary objection must satisfy three conditions, one, the point of law raised must either be pleaded or must arise as a clear implication from the proceedings; two, that it must be a pure point of law which does not require close examination or scrutiny of the affidavit and counter affidavits and three, the determination of such a point of law in issue must not depend on the court's discretion. See also: Jackline Hamson Ghikas v Mllatie Richie Assey Civil Application No.656/01 of 2021. (unreported). Regarding the first ground; Order VI rule 14 states that:- "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 same or to sue or defend on his behalf” I have also gone through the plaint and indeed, it is signed only by the plaintiff which is contrary to the law. However, I agree with the plaintiff’s counsel that procedural omissions such as missing signature of the advocate while the plaintiff’s signature is present, should not render the plaint void but it can be rectified. The act of signing signifies authorising, consenting or agreeing to the contents a person is signing. As long as the plaintiff himself has signed, there is no injustice created by non signing of his advocate. Therefore, this anomaly can not vitiate the whole plaintiff’s case, the plaintiff will be given an opportunity to amend the plaint by signing. Moving to the second ground, regarding verification clause, this will not detain me. I do not find it to be a point of law because it will need evidence to determine as to whether the deponent has knowledge with 8 Tanzanian laws and to what extent. This move will be going contrary to the case of Mukisa Biscuits (supra). That being said, the first point of preliminary objections has merit but it does not render the suit to be struck out the second ground holds no water and it is dismissed. The plaintiff is allowed to amend the plaint by ascribing the signature of the plaintiff’s counsel on the same plaint within 7 days from the date of this ruling. DATED at Mwanza this 16th day of August, 2024. L.K.J. ITEMBA JUDGE 9

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