

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC LAND APPLICATION NO. 23488 OF 2024 (Originated from the decision of Land Case No. 28323 of 2023, High Court of Tanzania, Land Division at Dar es Salaam, delivered by E.B. LUVANDA J on 19th June 2024) JACOB NEHEMIAH MUSHI.....APPLICANT
Versus THE COMMISSIONER FOR LAND.....1stRESPONDEN THE
HONOURABLE ATTORNEY GENERAL..... 2nd RESPONDENT THUWEBA OMARY
KILEMBA..... 3rdRESPONDEN MUSSA HUSSEIN
KHAMIS..... 4thRESPONDEN JOHN MWONDOKA
GUDABA..... 5thRESPONDEN

RULING

Date of last Order: 28/11/2024 Date of Ruling: 10/12/2024 LALTAIKA, J. This ruling arises from the preliminary objections raised by the 3rd, 4th, and 5th Respondents challenging the propriety of the affidavit and supplementary affidavit supporting the Applicant's chamber application. When the Application was called for mention on 19/11/2024, Page 1 of 9 parties opted for hearing by way of written submissions. With a nod of approval by this Court, the following schedule was ordered: Respondent's submissions in chief on the PO was to be filed on 21/11/2024, Applicant's reply 26/11/2024, Respondent's rejoinder if any 28/11/2024, Mention for necessary orders to fix the date of Judgment 28/11/2024 The Applicant and the 3rd to 5th Respondents enjoyed the skilful legal services of Ms. Eva Mayala and Mr. Abdul Said Naumanga, learned Advocates, respectively. They deserve commendations for spotless compliance with the ordered schedule. The next part of this Ruling is, in that order, a summary of submissions by both parties, my analysis of the law and the verdict. Mr. Naumanga began by submitting that the applicant's application was incompetent due to defects in the affidavits submitted in support of the chamber application. He advanced the following reasons. Firstly, he alleged that the applicant's affidavit was incurably defective for violating Section 8 of the Notaries Public and Commissioner for Oaths Act, Cap 12 [R.E. 2019], due to the absence of a jurat of attestation, which rendered the affidavit invalid. Secondly, Counsel averred, the supplementary affidavit supporting the chamber application was similarly defective, lacking proper attestation Page 2 of 9 and rendering it inadmissible. Lastly, the supplementary affidavit also lacked a proper verification clause, a defect that rendered the affidavit void ab initio. Mr. Naumanga referenced Black's Law Dictionary (7th Edition,

- p. 58), which defines an affidavit as a sworn statement of fact made before an authorized officer. He relied on the *Director of Public Prosecutions v. Dodoli Kapufi and Another*, Criminal Application No. 11 of 2008 [2011] TZCA 46, where the Court of Appeal emphasized that an affidavit must contain essential elements: a statement of facts, a verification clause, a jurat indicating the date, place, and authority under which it was sworn, and the signatures of both the deponent and the administering officer. The omission of any of these elements, Counsel averred, renders the affidavit defective. He argued that Section 8 of the Notaries Public and Commissioner for Oaths Act, Cap 12 [R.E. 2019] mandates the inclusion of the notary public or commissioner for oath's name in the jurat of attestation, confirming where, when, and by whom the oath was administered. The absence of a jurat, he submitted, was a fundamental defect that invalidates the affidavit and fatally impacts the application. Referring to the applicant's affidavit, Mr. Naumanga argued that it lacked the jurat of attestation entirely and thus failed to meet the essential Page 3 of 9 legal requirements for affidavits. He further referred to Order XLIII Rule 2 of the Civil Procedure Code [Cap. 33 R.E. 2019] (CPC), emphasizing that applications must comply with procedural rules, including filing affidavits that meet legal requirements. Additionally, he cited the High Court's decision in *Janeth Godfrey v. Joseph Bukwimba*, Misc. Civil Application No. 37 of 2020, where an application was struck out for lack of a jurat in the supporting affidavit. He highlighted that once an affidavit is expunged, the application becomes incompetent, as affirmed in the *Dodoli Case* (supra). On the second preliminary objection, Mr. Naumanga clarified that the term "supplementary affidavit" used in the notice of preliminary objections should be understood as a typographical error and that it referred to the "supporting affidavit." He submitted that the supporting affidavit sworn by Tinna Auckley was not duly attested by a Commissioner for Oaths. While the affidavit included a jurat, he argued, it lacked the official seal or stamp of the Commissioner, rendering it invalid under the law. He also criticized the use of a typed rather than handwritten name of the Commissioner, citing the *Director of Public Prosecutions v. Faruku Mushenga*, Criminal Page 4 of 9 Application No. 4 of 2015, where similar defects led to the affidavit being expunged. On the third preliminary objection, he argued that the deponent of the supporting affidavit was a third party who verified the affidavit as if she were the applicant. This, he contended, violated Order VI Rule 15(1) of the CPC, which requires verification by either the party to the suit or someone sufficiently acquainted with the facts. He maintained that this procedural irregularity rendered the affidavit incompetent and, by extension, the entire application. In conclusion, Mr. Naumanga urged the Court to uphold all three preliminary objections. He prayed for the expunging of the affidavits and their annexures from the record, rendering the application incompetent and fit to be struck out. He further requested costs against the applicant, emphasizing that the defects in the affidavits caused unnecessary litigation and expenses for the respondents. Ms. Maya I a, Counsel for the Applicant, on her part, began by addressing the first preliminary objection, which contended that the affidavit in support of the chamber application was incurably defective for violating Section 8 of the Commissioners for Oaths and Notaries Public Act (Supra). Page 5 of 9 Counsel submitted that the Respondents' arguments were misleading. She conceded that the jurat of attestation in the Applicant's

affidavit was incomplete, as the upper part, which should show the name, date, and signature of the deponent, was absent. However, Ms. Mayala emphasized, the affidavit did contain the name and signature of the Commissioner for Oaths. She argued that the affidavit's beginning section clearly indicated the deponent's name and signature. Should the Court find the anomalies substantial, Ms. Mayala reasoned, the Court could invoke the overriding objective principle to allow the Applicant to file an amended affidavit. On the second preliminary objection, Ms. Mayala cited *D.P. Shapriya & Co. Ltd v. Bish International BV* [2002] E.A. 47 and *Wilfred Muganyizi Rwakatare v. Hamisi Sued Kagasheki & Attorney General*, Civil Appeal No. 107 of 2008, where the Court held that a rubber stamp is not a necessary component of a jurat. She also emphasized that Section 8 of the Commissioners for Oaths and Notaries Public Act (Supra) does not mandate that the Commissioner's name be handwritten, and the Respondents had not demonstrated any prejudice caused by the typed name. Regarding the third limb of the preliminary objection, Ms. Mayala countered that the verification clause was proper and that Tinna Page 6 of 9 Auckley had verified the affidavit in her capacity as the deponent. However, if the Court deemed the verification clause improper, she referred to the cases of *Jamal S. Mkumba & Another v. Attorney General*, Civil Application No. 24 of 2019 and *Samyou v. BP Tanzania*, cited in *Geita Gold Mining Limited v. Lucas Ntobi*, Labour Revision No. 46 of 2022, which held that defective verification clauses could be amended to rectify the error. She prayed for the Court to allow an amendment if necessary. In conclusion, Counsel prayed for the dismissal of the preliminary objections and urged the Court to allow the application to proceed to hearing on merit. I have dispassionately considered the rival submissions and thoroughly examined the alleged defects. The following issues require my

determination.

1. Whether the affidavit in support of the application is incurably defective for lack of a jurat of attestation.
2. Whether the supplementary affida vit is defective due to the absence of valid attestation.
3. Whether the supplementary affidavit is defective for containing an improper verification clause. Page 7 of 9 On the first issue, the Respondents contended that the affidavit lacks a jurat of attestation, thereby offending Section 8 of the Commissioner for Oaths and Notaries Public Act (Supra). They relied on *DPP v. Dodoli Kapufi and Another* (Supra), which underscores the requirement for a jurat indicating the date, place, and authority under which the affidavit was sworn. In essence, the Applicant conceded that the jurat of attestation was incomplete but argued that the anomaly was not substantial and prayed for the application of the overriding objective principle to allow an amendment. The law is clear that a jurat is essential to validate an affidavit. As held in *Dodoli Kapufi* (Supra), the absence of a proper jurat renders an affidavit defective and inadmissible. This defect is not curable by the overriding objective principle, which cannot be invoked to cure substantive legal violations. On the second issue, the Respondents challenged the supplementary affidavit for

lacking an official seal or stamp of the Commissioner and for having a typed name of the Commissioner rather than a handwritten one. The Applicant countered that a rubber stamp is not part of the jurat. Page 8 of 9 Section 8 of the Commissioner for Oaths and Notaries Public Act does not mandate that the Commissioner's name be handwritten. However, the absence of an official seal or stamp breaches the requirement for clear identification of the administering authority. The defect in this case compromises the validity of the supplementary affidavit and cannot be disregarded. On the third objection, while judicial precedent allows amendment of defective verification clauses, this relief must be sought before substantive objections are raised. The Applicant did not proactively seek amendment but instead responded after the objection was raised, undermining procedural propriety. The cumulative defects in the affidavits supporting the application are substantive and incurable. In the upshot, the application is hereby struck out for being incompetent. Given the circumstances, I make no order as to costs. It is so ordered. E.I. LALTAIKA /- JUDGE 10/12/2024 Court: Ruling delivered in Court Chambers this 10th day of December 2024 in the presence of Mr. Geoffrey Luhanji, learned Advocate, holding brief for Ms. Eva Mayala, learned Advocate, Counsel for the Applicant and Mr. Abdul Said Naumanga, learned Advocate, Counsel for the 3rd, 4th and 5th Respondents. Page 9 of 9

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