

TANZANIA / JUDGMENT

MWAMBALASWA Ruling final

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB - REGISTRY AT MBEYA CIVIL CASE NO. 23479 OF 2024 CASE REFERENCE:
202409201000023479 JOHN MWAMBALASWA KILASILE.....PLAINTIFF
VERSUS AMBONI SISAL PROPERTIES LTD.....1ST DEFENDANT MBEYA
DISTRICT COUNCIL.....2ND DEFENDANT THE ATTORNEY
GENERAL.....3RD DEFENDANT

RULING

20th February & 20th March 2025 NONGWA, J. The Plaintiff filed this suit against the 1st, 2nd and 3rd Defendants jointly and severally for the declaratory judgment to the effect that, the acquisition of farm plot no. 1 UTZ /SNG/KL/59 with Square Meter 4428 and Farm number 2 UTZ / SNG/KL/56 with square meter 3218 the property of plaintiff is unlawful and void. He prays for the following orders; payment of Tsh 200,000,000/=, (two Hundred Million Shillings Only) with interest of 12% from the date of filing this suit to the date of payment, as specific damages, Tshs. 500,000,000/= (five Hundred Million Shillings Only) as general damages and costs of the suit. 1 Upon being served, the 1st defendant raised a preliminary objection on point of law that the Plaintiff is incurably defective for want of proper verification and pray for this court to struck out the plaintiff with costs. It is a rule of practice of the courts that, when the preliminary objection on point of law is raised then it has to be determined first. The plaintiff has been represented by Mr. Maulid Muganyizi, learned counsel while the 2nd and 3rd Defendant under the care of Mr. Michael Fyumagwa and Ms. Mary Peter, learned State Attorneys. Ms. Joyce Mwakapila represents the 1st Defendant. They agreed to dispose the objection by filing written submissions. Submitting in support of the raised preliminary objection, Ms. Joyce submitted that the plaintiff is in contravention of the mandatory requirement of Order VI Rule 15 of the Civil Procedure Code [Cap. 33 R.E 2019] (the CPC) for want of proper verification and prayed for court to struck out the matter with costs. Citing Order VI Rule 15(1) and (2) of the CPC, counsel submitted that it is a trite law that the sub paragraphs need to be verified separately and not generally. That the plaintiff at issue contains 16 paragraphs of which in the 12 paragraph of the plaintiff the plaintiff pleads about his cause action and the said Paragraph contains sub paragraphs i, 2 ii, and iii which the Plaintiff did not verify in his verification clause simply showing that the plaintiff did not verify his cause of action whether it is his own knowledge or it was the information learned from someone else. Submitting on the language used in rule 15(1) and (2), the counsel said the word used is “Shall”

which means must or mandatory according to section 53 (2) of the Interpretation of Laws Act, Cap 1. The counsel being aware of the principle of overriding objective or oxygen principle, she insisted the principle requires courts to deal with cases justly, speedily and to have regard to substantive justice as the same was not meant to absolve each and every blunder committed by parties in court proceedings. To authenticate her arguments, the counsel cited Rhoda Mwasifiga vs the Manager Nbc Bank and Others, Misc. Land Application No. 65 of 2017 [2020] TZHC 389 (5 March 2020; TanzLII), Mondorosi Village Council & Others vs Tanzania Breweries Ltd & Others, Civil Appeal No. 66 of 2017 [2018] TZCA 303 (14 December 2018; TanzLII) and Martin D. Kumaliya & Others vs Iron and Steel Ltd, Civil Application No. 70 of 2018 [2019] TZCA 542 (27 February 2019; TanzLII). Lastly the counsel insisted that there is no competent plaint before the court, no any technicalities in this matter for the court to apply oxygen principle. 3 In reply Mr. Maulid Muganyizi had no much to submit, he said order VI rule 15(1) of the CPC does not Mandatorily press for the numbering of the verifying party rather insist on the need to verify pleadings by the party who made it the same was properly done. That nowhere the plaint has offended order VI rule 15 (2) of the CPC as the said information are in the knowledge of the plaintiff and failure to indicate a certain number of paragraphs in verification clause is minor omission that can be cured under the overriding objective principle. The counsel insisted that the cited cases are distinguishable to the case at hand. Finding shelter in Sanyou Service Station Ltd vs BP Tanzania Ltd, Civil Application No .185/17 of 2018 [2019] TZCA 677 (22 May 2019; TanzLII) the counsel said defective clause can be cured by amendment. Referring the orders in Godfrey Lwehumbiza Mugini vs Paskazia Lubazibwa & 4 Others, Land Case No. 3 of 2023 [2023] TZHC 21221 (22 September 2023; TanzLII) High Court Bukoba, the counsel was ready to be ordered to amend the pleadings by verifying the remaining facts of the main suit. Rejoining, Ms. Joyce reiterated her submission in chief and said the cited case of Sanyou Service Station Ltd (supra) is distinguishable to 4 the case at hand on the reason that in the Sanyou's case there was an issue of wrong numbering of paragraphs indicating paragraph as number 6 instead number 1, and then going to verify the paragraphs whose numbers are wrong. While in the matter at hand the plaintiff failed to verify numbered paragraphs which is contrary to Order VI Rule 15(2) of the CPC as stated above. She acknowledged that the court may use its discretion powers to grant leave to the plaintiff to amend the defective Plaint undoubtedly as the rule goes the discretion powers has to be exercised judiciously. She insisted that there is no competent Plaint before the Court, the same to be struck out with costs. I have dispassionately considered the rival submissions and records by the parties, the only question is whether the defect is fatal and whether the applicant can be allowed to amend verification of the plaint. Verification clause is governed by the law under Order VI rule 15 of the CPC, the law provides that; '15(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case. 5

- (2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verified upon information received and believed to be true.

- (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.' The defence counsel complaint is that sub paragraphs in the plaint were supposed to be verified separately and not generally, the counsel has refereed this court to paragraph 12 of the plaint which contains subparagraphs and press that they are not reflected in the verification clause. Mr. Muganyizi said order VI rule 15(1) of the CPC does not mandatorily press for the numbering of the verifying party rather insist on the need to verify pleadings by the party who made it and the same was properly done. I find it necessary to reproduce the said paragraph 12 for easy of reference the same is extracted from the hard copies documents at least the numbering is proper than that in the system; '12. That the 1st, 2nd and 3rd Defendants above have been joined into this suit on account of the following grounds: - 6
- i. That the 1st Defendant is sued on account of what has been stated in paragraph 7 and 8 above. ii. That the 2nd Defendant is sued on account of what has been stated in paragraph 7, iii. The 3rd Defendant is sued on the fact that the Attorney General is answerable in all suits against the government, Ministry, Government department, Local Government Authority e.t.c, Under Section 25 of the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020 which amended Section 6 of the Government Proceedings Act Cap 5 RE 2019 as the 1st Defendant is the Private Institution which agreed with the 2nd Defendant to acquire and sell the land in dispute which belongs to the plaintiff.' There is no dispute that paragraph 12 contains sub-paragraphs numbered- i, ii and iii which are not reflected in the verification clause. The verification clause reads; 'VERIFICATION I JOHN MWAMBALASWA KILASILE, the plaintiff herein, DO HEREBY state and verify that, what has been stated herein above in paragraph 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 is true to the best of my own knowledge.'
- 7 The question is whether non-verification of subparagraphs within a verified paragraph is fatal. While verification clauses are crucial for affidavits and pleadings in our jurisdiction, is generally not considered fatal and does not automatically invalidate the pleading. As rightly submitted by Mr. Muganyizi, Order VI rule 15(1) of the CPC does not Mandatorily press for the numbering of the verifying party rather insist on the need to verify pleadings by the party who made it and the same was properly done. Once each paragraph in the verification clause has been verified by the deponent to the best of his knowledge, such verification is valid, and it is not mandatory to verify separate subparagraphs. The claim that the case of Sanyou Service Station Limited (supra) being distinct from the fact at hand is undisputable. Affidavits and pleadings are not the same and they do not serve the same purpose. This is because affidavits are governed by Order XIX, Rule 3 of the CPC while Pleadings are governed by Order VI of the CPC read together with Rule 13 of Order VIII. Also, unlike the pleadings, affidavits are an alternative to oral evidence. By virtue of Order VI, rule 1 pleading means, "a plaint, written statement of defence, and other subsequent pleadings as may be presented under Rule 13 of Order VIII" 8 Therefore, it is worth noting that Order VI, Rule 15 does not apply to affidavits and do not fall under the same law. However, the principle laid down in the case of Sanyou Service Station Limited (supra) serves for all defects in verification clauses in that defects in the verification clause are no longer

considered fatal and do not automatically lead to striking out the suit. The remedy is that the court may allow the party to amend the affidavit to rectify the issue rather than dismissing the entire application. Whether the defects occasioned in the verification clause of the plaint cannot be cured under the principle of overriding objective. The defence counsel insists in her submission that the principle requires courts to deal with cases justly, speedily and to have regard to substantive justice as the same was not meant to absolve each and every blunder committed by parties in Court proceedings. Notwithstanding the above position, even if it can be said and found that, verification is defective as argued by the counsel for the 1st defendants, I do not think as of now, that, guided by the overriding objective principle now enshrined vide The Written Laws (Miscellaneous Amendments) (No. 3) Act No. 8 of 2018, is fatal to the extent of rendering the suit fatal as no any injustice would be occasioned to the parties. Similar situation in the case of Philip Anania Masasi v 9 Returning Officer Njombe North Constituency and others, Misc Civil Cause No. 7 of 1995 -Songea, Civil Cause No. 7 of 1995 (unreported) in which Samatta, J.K (as he then was) cited with approval commentaries in the book titled: Principles of Pleadings in India by edition where the author states: ‘...want of signature or verification or any defect... will not make the pleading void and a suit cannot be dismissed nor can defence be struck out for want of or defect in the signature or verification of the plaint... as these are matters of procedures only.’ Section 3A of the Written Laws (Miscellaneous Amendments) (No.3) Act, 2008 which amended Section 3 of the CPC provides that: - "The overriding objective of this Act shall be to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes governed by this Act". [Emphasis added] " Also, under section 3B.-(1) of the said law provides that: - "For the purpose of furthering the overriding objective specified in section 3A, the Court shall handle all matters presented before it with a view to attaining the following-

- (a) just determination of the proceedings;
- (b) N/A; and 10
- (c) timely disposal of the proceedings at a cost affordable by the respective parties". [Emphasis added] Going by the above provisions of the law, it is obvious the intention of the legislature in amending section 3 of the CPC by adding sections 3A and 3B which introduced the principle of overriding objective was to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. Therefore, defects in verification clause has been treated to be a mere irregularity and is curable by amendment at any stage of the suit and when it is cured by amendment, the plaint must be taken to have been presented on the date it was originally presented and not the date on which it was amended. Having stated the above, I hold that the preliminary objection raised by the plaintiffs is devoid of legality and lacks merit. Consequently, the same is overruled and the defendants are given seven days within which to amend their respective pleading. The time stipulated above will count from the date of delivery of the present ruling. It is so ordered. 11 V.M. NONGWA JUDGE 20/3/2025 Dated and Delivered at Mbeya this 20th March 2025 in presence of Ms. Joyce Brown for 1st Defendant, Mr. Michael Fyumagwa for the 2nd and 3rd Defendants (on VC) and Mr. Maulid

Muganyizi for Plaintiff. V.M. NONGWA JUDGE 12

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