

TANZANIA / JUDGMENT

MOHAMED ABDULLA safii

COURT
TANZLII

DECIDED
1 November 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LAND DIVISION AT DAR ES
SALAAM MISC. LAND APPLICATION NO. 24804 OF 2024 (from Land Case No. 1000023659 of2024)
MOHAMED ABDULLAH AHMED..... 1stAPPLICAN YASIR
MOHAMED ABDULLAH..... 2ndAPPLICAN YUSRA
MOHAMED ABDULLAH..... 3rdAPPLICAN NOUFA
MOHAMED ABDULLAH..... 4th APPLICANT ASMA
MOHAMED..... 5TMAPPLICAN AMINA SALIM
SALEH..... 6thAPPLICAN UNFREIGHT LOGISTIC
LIMITED..... 7thAPPLICAN VERSUS GLOBAL OIL
LIMITED..... 1stRESPOND AZANIA BANK
LIMITED..... 2ndRESPOND MARK AUCTIONEERS
AND DEBT COLLECTORS COMPANY
LIMITED.....3rdRESPOND

RULING

29/10/2024 & 6/11/2024 N.E. MAN DI A, J This ruling emanates from a point of preliminary objections on point of law raised by the 2nd and 3rd respondent challenging the competence of the Applicant's application. The preliminary objection attacks the competence of the application on two fronts: One that the he instant application is incompetent for not being accompanied by affidavit of a person mentioned in the chamber application and two, that the application is incompetent for being accompanied by a defective affidavit sworn by Mfaume Zuberi Yahya but verified by other persons. vTS i Disposal of the preliminary objection was made viva voce. The 2nd and 3rd Respondents enjoyed the legal services of Ms. Upendo Mmbaga, learned counsel while the Applicants who were served with the notice of the preliminary objection on 1st November, 2024 through their Advocate Phares Mshana and the 1st Respondent were absent hence, hearing proceeded ex parte against them. Ms. Mmbaga combined the two points of preliminary objection and argued them together. She submitted that the Applicant's application is incompetent for not being accompanied by an affidavit of a person mentioned in the chamber summons and that the application is incompetent for being accompanied by a defective affidavit sworn by MFALIME ZUBERI YAHYA but verified by other persons. Ms. Mmbaga supported her contention with the provision of Order VI Rule 15(1) and (3) of the Civil Procedure Code [Cap. 33 R.E 2019]. The counsel contended that the law requires that an affidavit be verified by a party or

by some other person proved to the satisfaction of the court to be acquainted with the facts of the case and be verified by the person whom has sworn the affidavit. Ms. Mmbaga contended further that, looking at the affidavit of the Applicants in support of their application filed 2 on 3rd October, 2024, it shows that it has been sworn by one MFAUME ZUBERI YAHYA who is not among the Applicants. Moreover, that the affidavit has been verified by MOHAMED ABDALLAH AHAMED, YASSIR MOHAMED ABDALLAH, YUSRA MOHAMED ABDALLA, NOUFA MOHAMED ABDALLAH, ASMA MOHAMED and AMINA SALIM SALEH who are the Applicants. That the persons who have verified the affidavit were not the one who sworn it and there is no indication that it is a joint affidavit. She submitted that, under Order VI Rule 15(1) and (3) of the Civil Procedure Code (supra) the affidavit is as good as not verified hence, incompetent in the eyes of the law and makes the application incompetent before the court. Ms. Mmbaga finally prayed for the application to be struck out with costs. After hearing the submission made by Ms. Mmbaga, my first task is to determine whether there is a competent application before me. After perusing the records, I have realized that the application was filed by way of chamber summons under Order XXXVII Rule 1(a) and (b) and 2(1), section 68(e) and 95 of the Civil Procedure Code(supra) and was supported by the affidavit of the Applicants named in the instant application. However, the affidavit was affirmed by one MFAUME ZUBERI YAHYA who 3 was not among the Applicants and it was verified by the Applicants. Despite the facts that the affidavit was affirmed by a party who was not among the Applicants and verified by the Applicants, it did not indicate if it was a joint affidavit or not. It is trite law that all application to the court shall be made by way of chamber summons supported by affidavit and there is no dispute that legally a defective affidavit cannot support an application. This is the requirement under Order XLIII Rule 2 which provides that: "2 Every application to the Court made under this Code shall, unless otherwise provided, be made by a chamber summons supported by affidavit.... "[Emphasize added] It is undisputed that the instant application was made by way of chamber summons. However, it appears on record that the affidavit in support of the chamber summons has been affirmed by MFAUME ZUBERI YAHYA, who was not among the Applicants and, was verified by all the Applicants who did not affirm it and without an indication that it was a joint affidavit or not. It is my considered view that the affidavit does not worth the name as it contravenes the principle enshrined under Order VI Rule (2) and (3) of the Civil Procedure Code(supra) which provides that: 4 ~ (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.

- (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". [Emphasize added] It is crystal clear from the wording of the cited provision that the impugned affidavit does not fit the name as the same was made in contravention of the provisions cited above. As rightly submitted by Ms. Mmbaga, the affidavit is defective for being affirmed by a person who was not among the Applicant and also being verified by persons who did not affirm it. The outcome of such an affidavit is to make the whole application incompetent as it stands on no legs. Having found the affidavit to be defective, it goes without saying that the whole application before this Court

becomes incompetent and, I hereby struck it out with costs. Order accordingly. N.E.
MANDIA JUDGE

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