

IN THE HIGH COURT OF ZANZIBAR

HELD AT TUNGUU

CIVIL CASE NO 76 OF 2022

1. KHAMIS ABDALLA SHAKA

2. AMINA ABDALLA AMEIR..... PLAINTIFFS

VERSUS

**1. THE ATTORNEY GENERAL
OF TANZANIA**

**2. PRINCIPAL SECRETARY MINISTRY
OF HOME AFFAIRS**

**3. INSPECTOR GENERAL OF POLICE
TANZANIA**

4. COMMISSIONER OF POLICE ZANZIBAR

DEFENDANTS

RULING

24th July & 12th December, 2023

A. I. S. Suwedi, J

The plaintiffs, **Khamis Abdalla Shaka** and **Amina Abdalla Ameir** filed this suit against the defendants mentioned earlier, claiming compensation of TZS 6,000,000,000/- whereby TZS 5,000,000,000/- for specific damage and TZS 1,000,000,000/- as general damage for unlawful detention committed by defendants through the 4th defendant who

detained the plaintiffs for 100 days. The plaintiffs asserted that the 4th defendant arrested the 2nd plaintiff on 09/11/2021, and the 1st plaintiff was arrested on 11/11/2021. Consequently, the unlawful detention caused harm to them, lowered their reputation, and it caused psychological torture to them.

The defendants believe that the suit cannot stand in Court, and therefore, they filed the preliminary objection:

That the Plaint is incurable defective for contravening Order VI
Rule 15 (1) (2) and (3) of the Civil Procedure Decree

On the hearing day, the plaintiffs, represented by the learned counsel Hassan Kijogoo and the defendants, represented by Mr. Mathew Fuko, learned State Attorney from the Solicitor General's Office.

Submitting, Mr Fuko stated that the gist of the point of law is the failure to date the verification clause as per Order VI, Rule 15 of the Civil Procedure Decree, Cap 8. Sub-rule (3) of the Order requires the plaintiff to verify, sign the Plaint, and state the place. The word "shall" in the provision signifies that the requirement is mandatory. He strengthened his argument by citing the case of **Bansons Enterprises Limited v. Mire Artan**, Civil

Appeal No. 26 of 2020 (unreported) on page 12. He finally requested me to strike out the Complaint.

In reply, counsel Kijogoo conceded the point stated. However, he requested the Court to observe the overriding principle since the defect had not touched the root of the case. Henceforth, he prayed for the plaintiff to date the verification clause.

Mr Fuko opposed invoking the overriding objective principle since it cannot be used blindly. The principle cannot be used if the matter is not legally proper. Any document has to be prepared and filed in line with the laws and procedures. For that, the defendants reiterated their earlier prayer.

Straightforward, I read the Complaint claimed to offend Order VI, Rule 15 (3), and I have found it true that the plaintiffs did not date the verification clause. It is as follows:

We, Khamis Abdalla Shaka and Amina Abdalla Ameir being the Plaintiffs, do hereby verify that all what is stated herein above through paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 are true to the best of our knowledge and understanding while the information in paragraph 12 on the fact of jurisdiction is information received from our lawyer Mr Hassan Kijogoo which we believe the same to be true and correct and whereas the rest facts

in paragraph 12 are true to the best of our knowledge and understanding.

(Sgd)

.....
1st PLAINTIFF

(sgd)

.....
2nd PLAINTIFF

Presented for filing this 30th day of November, 2022

(sgd)

.....
REGISTRY OFFICER

On the other hand, I observed the provision stated to have been offended. Initially, a pleading must be verified at the foot by the party or by one of the parties pleading, and the same must be signed and dated. Order VI, Rule 15 (1) (3) (supra). It says:

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.

(2).....

(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 words used in the provision signify that the requirement is mandatory, as stated by Mr Fuko. A pleading must be verified, and the verification clause must be signed and dated by the person pleading.

Besides, counsel Kijogoo requested the involvement of the overriding principle and allow the plaintiffs to insert a date to conform to the law requirement. I know that the principle was developed to facilitate just and expeditious trials. However, the Court of Appeal clearly stated that the doctrine cannot be used to avoid the mandatory rules. In the case of **Martin D. Kumaliya & 117 others v. Iron and Steel LTD**, Civil Application No. 70/18 of 2018 (unreported), the Court said:

While the principle is vehicle for attainment of substantive justice, it will not help a party to circumvent the mandatory rules of the Court.

From the wording of the quoted case and the fact that the requirement under Rule 15 (3) above is mandatory, I am hesitating to accept the prayer by counsel Kijogoo.

In the case of **Bansons Enterprises**, cited by Mr Fuko, the Court of Appeal had this to say:

Where a plaint is not duly signed and verified in accordance with the law, there is no suit which the Court can legally try.

In the instant suit, the plaintiffs did not state the date and place it was signed. Henceforth, it violated Order VI, Rule 15 (3), as said by the

defendants. Therefore, I am sustaining the objection tabled, and the suit is now struck out with no order as to costs.

DATED at TUNGUU ZANZIBAR this 12th day of December, 2023

A handwritten signature in blue ink, appearing to read 'A. I. S. Suwedi', is centered on the page.

A. I. S. Suwedi

JUDGE