

**IN THE HIGH COURT FOR ZANZIBAR**

**HELD AT TUNGUU**

**CIVIL APPLICATION NO. 142 OF 2023**

**BETWEEN**

**HAJI ARIF DAWOOD    ....    .....    ....    .....    APPLICANT**

**VERSUS**

**JAKU HASHIM AYOUB    ....    .....    ....    .....    RESPONDENT**

**RULING**

**Date: 3<sup>th</sup> January, 2024 & 22<sup>th</sup> March, 2024**

**BAKARI, J.**

This ruling is in respect of a preliminary objection raised by the respondent in this matter one Jaku Hashim Ayoub through his Advocates Salum H.B. Mnkonje and Abdulkhaliq M. Alley from Mnkonje Law Officers Advocates, Malindi (Behind the old Dispensary) against the applicant's application for extension of time to file a notice of appeal against a judgement and Decree of this Court issued by Hon. Omar O. Makungu CJ/Successor Judge dated 22<sup>nd</sup> December, 2021, in Civil Case Number 22 of 2009 between the parties herein.

The applicant in this application who is represented by his advocate Victoria Sosthenes Mwiliko from Golden Scale Attorneys, Mpendae Zanzibar had earlier, filed a Misc. Civil Application No. 78 of 2023 for extension of time to file notice of appeal which was struck out by Justice Rabia H. Mohamed. According to the Notice of Preliminary Objections, the respondent's objection is based on the following points of law:

- 1. That, the verification of the affidavit of Haji Arif Dawood is defective for not giving the grounds of his statement of belief.**
- 2. That, the jurat of attestation of the affidavit of Haji Arif Dawood is defective for lying that the verification and swearing was done at Dar es salaam contrary to the Commissioner for Oaths stamp.**
- 3. That, the verification of the affidavit of Roman Selasini Lamwai is defective for not giving the sources of information.**

4. That, the jurat of attestation of the affidavit of Roman Selasini Lamwai is defective for that the verification and swearing was done at Dar es Salaam contrary to the Commissioner for Oaths stamp.
5. That, the verification of the affidavit of Victoria Sosthenes Mwiliko is defective for not giving the grounds of belief of the information received and averred in her affidavit.
6. That, the verification of the affidavit of Victoria Sosthenes Mwiliko is defective for containing lies that the verification was done at Dar es Salaam contrary to the Commissioner for Oaths stamp.

The court on its side ordered that, the above points of law be heard and argued by way of written submissions.

In his submission, Mr. Abdulkhaliq M. Aley, advocate for the respondent dropped the point no. 3 of the preliminary objection which is to the effect that, ***the verification of the affidavit of Roman Selasini Lamwai is defective for not giving the sources of information;*** and thus making the discussed objections to be five instead of six.

In relation to the the first point which states that, ***verification of the affidavit of Haji Arif Dawood is defective for not giving the grounds of his statement of belief,*** Advocate Abdulkhaliq submitted that, the applicant have made a verification clause which is contrary to the law. He said, it is a common principle of law that, a deponent must in his verification clause state what statement he or she verifies from his personal capacity and what information is from whom and the grounds of his or her belief of that person. In emphasizing his point, advocate Abdulkhaliq invited the court to the case of ***AUGUSTINE LYATONGA MREMA AND OTHERS v. ATTORNEY GENERAL AND OTHERS [1996] T.L.R 273.***

He went on to submit that, in this application, the deponent verified that, he received advice from his advocates Roman Selasini Lamwai of Dar es Salaam and Victoria Mwiliko of Mpendae Zanzibar which he verily believes to be true. He said, the deponent failed to state the reasons for such belief to be true which is material problem in the eyes of the law. He prayed the court to dismiss the matter with this ground alone.

On the second point of the objection which reads that, ***the jurat of attestation of the affidavit of Haji Arif Dawood is defective for lying that the verification and swearing***

***was done at Dar es Salaam contrary to the commissioner for oaths stamp***, Mr. Abdulkhaliq submitted that, the jurat of the applicant appears in bold to have been affirmed in Dar es Salaam m by Haji Arif Dawood which is a lie and it is not true. He narrated that; it is a lie due to the fact that, the said Commissioner for oath is practicing in Zanzibar from his stamp and the place the said oath was taken in Tunguu Zanzibar.

He has gone on submitting that, an oath can not be seen to have been taken in Dar es Salaam and at the same time at Tunguu Zanzibar. He said, Dar es Salaam and Zanzibar are separated by Indian Ocean and thus the affidavit of the applicant does not state the truth from its face of the record. He added that, it can not be relied upon due to its falsehood and it is therefore, unreliable to stand before the court for the determination of this application.

Again, he stated that, if the jurat was taken in Dar es Salaam as stated, then, the commissioner for oath administering the said oath is not practicing in Dar es Salaam from his indicated rubber stamp which is seen in the jurat. He said, verification of affidavit and jurat of attestation must simultaneously go together due to the reason that, the Commissioner for Oath who was administering the said affidavit administers the whole of the said affidavit and not just the jurat of the attestation. In cementing his argument, Mr. Abdulkhaliq cited the case of ***Zubeir Mussa V. Shinyanga Town Council [2007] T.L.R 104*** which was held among other things that:

*"In this Country the requirement that the place where and the date when an oath or affidavit is taken or made must be shown in the jurat of attestation is statutory one which must be complied with and is not a dispensable technical requirement"*.

He said, from the circumstances of this application, it is not known where the affidavit was taken whether in Zanzibar Tunguu or Dar es Salaam as the deponent failed to indicate the proper place. Thus, the deponent lied to this court. Mr. Abdulkhaliq prayed the court to dismiss the application with costs for being defective of lying.

As to the third point of the objection (N.B originally it was point no.4 but it became point no. 3 after advocate Abdulkhaliq dropped of the original point no. 3) which states that, ***the jurat of attestation of the affidavit of Roman Selasini Lamwai is defective for that the verification and swearing was done at Dar es Salaam contrary to the commissioner for oaths stamp***; Mr Abdulkhaliq stated that, the jurat of the applicants appears in bold to have been affirmed in Dar es Salaam by Roman Selasini Lamwai which is a lie and it is not true.

He said, it is lie due to the fact that, the said Commissioner for oath is practicing in Zanzibar from his stamp and the place the said oath was taken in Tunguu Zanzibar.

Again, he said, an oath can not be seen to have been taken in Dar es Salaam and at the same time in Zanzibar. He said, Dar es Salaam and Zanzibar are separated by Indian Ocean. He submitted that, affidavit of the applicant does not state the truth from its face of the record and thus, it can not be relied upon due to its falsehood and unreliable to stand before the court for the determination of the said application.

He went on to narrate that, if the jurat was taken in Dar es Salaam as stated, then the Commissioner for oaths administering the said oath, is not practicing in Dar es Salaam from his indicated rubber stamp which is seen in the said jurat. He said, verification of affidavit and jurat of attestation must simultaneously go together due to the reason that, the Commissioner for oath who was administering the said affidavit administers the whole of the said affidavit and not just the jurat of the attestation.

Once again, Mr. Abdulkhaliq cited the case of ***Zubeiri Mussa V. Shinyanga Town Council*** (supra) to strengthen his argument. He said, from the circumstances of this application, it is not known where the affidavit was taken whether in Zanzibar Tunguu or Dar es Salaam. He said, the deponent failed to indicate the proper place and thus lied to this honourable court. He said, an affidavit is one document which can not bear two different places it was taken. He prayed the court to dismiss the application with the orders as to cost for being defective of lying.

As to the fourth point of the objection (N.B originally it was the point no.5 but it became point no. 4 after advocate Abdulkhaliq dropped of the original point no. 3) which states that, ***the verification of the affidavit of Victoria Sosthenes Mwiliko is defective for not giving the grounds of belief of the information received and averred in her ffidavit;*** Mr. Abdulkhaliq submitted that, the deponent Victoria Mwiliko have made a verification clause which is contrary to the law. He said, it is a common principle of the law that a deponent must state in his verification clause what statement he or she verifies from his personal capacity and what information is from whom and the grounds of his or her belief of that person. Again, he cited the case of ***AGUSTINE LYATONGA MREMA AND OTHERS V. ATTORNEY GENERAL AND OTHERS*** (supra) by showing the emphasis of his point.

He said, in this application, the deponent verified that, she received information in her paragraph 12 of her affidavit from the applicant which she verily believe to be true without stating the grounds and reasons of her beliefs. He stressed that, the deponent failed to state the reasons and grounds for such belief which is very material problem in the eyes of the law. He prayed the court to dismiss the application with cost in respect of this point.

In relation to the fifth point of the objection (N.B originally it was the point no.6 but it became point no. 5 after advocate Abdulkhaliq dropped of the original point no. 3) which states that, ***the verification of the affidavit of Victoria Sosthenes Mwiliko is defective for containing lies that the verification was done at Dar es Salaam contrary to the Commissioner for Oaths stamp;*** advocate Abdulkhaliq submitted that, the verification of the deponent affidavit named Victoria Mwiliko appears in bold to have been affirmed in Dar es Salaam and the same it was sworn in Unguu which is a lie and it is not true. He did put it clear that, it is a lie due to the fact that, the said Commissioner for oaths is practicing in Zanzibar and the place the said oath was taken in Tunguu. He said, the said Commissioner for oaths administers whole of the said oath and not just jurat of the said affidavit. In this regard he said, the said Commissioner for oaths did not administer whole of the oath as it appears.

He went on to submit that, an oath cannot be seen to have been taken in Dar es Salaam and at the same time in Zanzibar. He said, Dar es Salaam and Zanzibar are separated by Indian Ocean. He said, affidavit of the applicant does not state the truth from its face of the record and it cannot be relied upon due to its falsehood and hence unreliable to stand before the court for the determination of the said application.

Mr Abdulkhaliq has further submitted that, if the jurat was taken in Dar es Salaam as stated, then, the Commissioner for oaths administering the said oath is not practicing in Dar es Salaam from his indicated rubber stamp which is seen in the jurat. He said, verification of affidavit and jurat of attestation must simultaneously go together due to the reason that, the Commissioner for oath who was administering the said affidavit administers the whole of the said affidavit and not just the jurat of the attestation.

In emphasizing his argument, Mr. Abdulkhaliq has invited this court to the case of ***Zubeir Mussa V. Shinyanga Town Council*** (supra). He said, from the circumstances of this application, it is not known where the affidavit was taken whether in Zanzibar Tunguu or Dar es

Salaam. He said, the deponent failed to indicate the proper place. He said, the deponent lied to this court. On that basis, he prayed the court to dismiss the application with costs for being defective of lying.

In his reply to the respondent's submission in chief, advocate Victoria Sosthenes Mwiliko on behalf of the applicant observed that, the preliminary objection as raised and submitted on can be grouped into two main points, these are:

- 1) The verification of affidavits of Haji Arif Dawood, Roman Selasini Lamwai and Victoria Sosthen Mwiliko are defective, respectively, for not giving grounds of statement of belief, not disclosing source of information, not giving grounds of belief of information received and averred in the affidavit and for containing lies.**
- 2) That, the jurat of attestation of the affidavits of Haji Arif Dawood and that of Roman Selasini Lamwai are respectively defective for lying that the verification and swearing was done at Dar es Salaam contrary to the Commissioner for oath stamp.**

Arguing on the first point of the objection which states that, **the verification of affidavits of Haji Arif Dawood, Roman Selasini Lamwai and Victoria Sosthen Mwiliko are defective, respectively, for not giving grounds of statement of belief, not disclosing source of information, not giving grounds of belief of information received and averred in the affidavit and for containing lies;** Advocate Mwiliko stated that, while they agree with the counsel for the Respondent on the law governing affidavits as accentuated in the case of **Augustine Lyatonga Mrema and Others v Attorney General and Others [1996] T.L.R 273**, but they differ with the Respondent's Counsel on his submission that the applicant's affidavit and that of his counsel Victoria Sosthen Mwiliko are in contravention of that law. She said, the applicant's affidavit and that of his counsel are in full compliance with the said case law in that where the deposition in the affidavit has been made based on information, the source of that information has been disclosed, and where the deposition has been made based on belief the ground of such belief has been stated.

It is her further submission that, no any deposition /paragraph in the affidavit of the Applicant or of the Respondent which has been deposed based on the deponent's belief which would then require the deponent to disclose the grounds of his belief in the verification or in the respective paragraph. She said, the Respondent's Counsel has just generalized his submission on the matter based on the verification clause, which is not the law and not deposition.

She continued to submit that, it is the duty of the Respondent's Counsel to come up clearly with paragraphs of the affidavit which in his view have offended the said law, in the case at hand. She said, since the Respondent's Counsel has not come up with such paragraphs, then, how will the court get to know whether a particular paragraph has not been properly verified or not. Ms. Mwiliko went on submitting that, this has been observed by the court in the case of **Augustine Lyatonga Mrema and Others v. Attorney General and Others** [1996] T.L.R 273 at 281 para. F that:

***"Nevertheless, it is imperative that whoever alleges the existence or non - existence of a set of facts has a duty to lead evidence in proof of those facts. This rule of evidence is equally applicable to the applications such as this one."***

Advocate Mwiliko has gone to submit that, in respect of the affidavit of Haji Arif Dawood, the Counsel for the Respondent submitted that, the verification of his affidavit is defective for not giving the grounds of his statement of belief. She said, his submission is misplaced as the paragraph at issue, to wit paragraph 10 (i) to (vii) has been deposed on advice received from his advocates. She said, the paragraph start with the following words *"That I have been advised by my Advocates Roman Selasini Lamwai of Dar es Salaam and Victoria Sosthen Mwiliko of Mpendae Zanzibar..."*; and the verification clause has verified it that *"what is stated in paragraph 10 (i) is true according to the advise I received from my advocates Roman Selasini Lamwai of Dar es Salaam and Victoria Sosthen Mwiliko of Mpendae Zanzibar which advise I verily believe to be true"*.

According to advocate Mwiliko, the question to be asked is **what the basis of the disposition in para is. 10 (i) to (vii)?**, she said, the answer is **"information"**. She said, had the said paragraph stated with the words "I believe my grounds for extension of time

are as advised by my advocates." Assuming that would have been the case, then, the basis of information would have been the "**belief**". There fore, it is the submission of Advocate Mwiliko that, the source of information received by the deponent has been disclosed to be from his advocates Roman Selasini Lamwai and Victoria Sosthen Mwiliko. The facts that, he has disclosed them to be advocates, it is presumed that, they are experts in legal matters and are licenced to practice law in Tanzania Mainland and Zanzibar respectively.

In the same vein, Ms. Mwiliko continued to submit that, what law requires is that, where the diposition is based on information, the source of that information has to be disclosed. She said, in this case at hand, the applicant has disclosed the source of information as his advocates Roman Selasini Lamwai and Victoria Sosthen Mwiliko , thus, in full compliance with the case of **Augustine Lyatonga Mrema and Others v Attorney General and Others** [1996] T.L.R 273 at 273 para. E where the High Court (Maina, J., Kyando, J., and Makanja, J.) while citing Order XIX Rule 3(1) of the Civil Procedure Decree of Zanzibar observed and held as follows:

***"It is statutory requirement that where an affidavit is based on the deponent's beliefs, grounds for such beliefs must be disclosed. So, also, it is now settled law in this country that where an affidavit is based on information received form others, the source of that information must be disclosed."***

Thus, Ms. Mwiliko has added that, the applicant complied with as the sources of information received by him in para. 10 of his affidavit have been disclosed to be from is advocate already mentioned above. She said, the same position was held by the Court of Appeal in the case of **Salima Vuai Foun v. Registrar of Co – operative Societies & Three Others**, Civil Appeal No. 36 of 1994, CAT at Zanzibar (unreported), where theirLordships observed as follows at page 4 of the typed judgement as follows:

***"The principle is that where an affidavit is made on information, it should not be acted upon by any court unless the sources of the information are specified."***

Thus, she said, the applicant has complied with as he specified the source of information in the deposition it self under para. 10 and in the verification clause that the advice he received is from his advocates Roman Selasini Lamwai and Victoria Sosthen Mwiliko.



She said, they have noted that, the respondent has abandoned /withdrawn the similar objection in respect of the affidavit deposited by Roman Selasini Lamwai but he however continued with the similar objection against the affidavit deposited by advocate Victoria Sosthen Mwiliko where Counsel for the Respondent submitted that, the deponent in that affidavit verified that, she received information in para. 12 of her affidavit which she verily believes to be true without stating the grounds and reasons of her beliefs. Ms. Mwiliko stated that, the submission is misguided and unfounded in that the deposed paragraph 12 in the affidavit of Victoria Sosthen Mwiliko has deposed that:

*"That on 17<sup>th</sup> October, 2023 immediately after I obtained a copy of the Ruling that struck out Misc. Civil Application No. 78 of 2023 I started looking for the applicant, who ordinarily resides in Dar es Salaam when I am in Zanzibar, for firm instructions to file a fresh application for extension of time within which to file notice of Appeal in vain until on 31<sup>st</sup> October, 2023 when I managed to get him and he told me **he was seriously sick and that he had just started recovering and he gave me instructions to file the current application. A copy of his medical chit is annexed herewith and marked "H" to form part of this affidavit.**"*

Ms. Mwiliko said, it is that bolded part of paragraph 12 of the affidavit of Victoria Sosthen Mwiliko which is the information received from the applicant Haji Arif Dawood, which the deponent has verified it as follows:

*"What is stated in paragraph 12 is partly true according to my own knowledge and partly true according to information I received from Haji Arif Dawood the Applicant herein, which information I verily believe to be true".*

She has further stated that, the deposition in that paragraph 12 as clearly quoted above is partly true according to information received from the Applicant which, the deponent disclosed him to be Haji Arif Dawood, thus complied with the legal requirement of disclosure of the source of information. According to her, he did not only disclose his name but also his role in the case as the Applicant. In that regard, coupled with the above cited cases. Ms. Mwiliko submitted that, the verification clause has properly verified para. 12 of the affidavit, further that the medical chit too, has been annexed to the deposed paragraph. Ms. Mwiliko

submitted that, to that end, the preliminary objection as to the defective verification is devoid of merit and thus, it should be dismissed with costs.

Again, advocate Mwiliko stated that, the Respondent instead of attacking the deposed paragraph to be contrary to what has been verified, he has attacked the verification clause for not containing grounds the grounds of belief. She said, the paragraphs at issue have been deposed based on information but not on belief, there fore is no need of disclosing the grounds for belief. She said, the words "**which I verily believe to be true**" which have been added in the verification clause immediately after disclosure of source of information, are not a legal requirement and can be rendered superfluous.

However, she said, they have been added to supplement the verification in showing the reliability and trustworthines of the source of information based on the afore disclosed source of information, to wit when it disclosed 'Advocate Roman Selasini Lamwai and Victoria Sosthen Mwiliko. She said, it implies that, that advocate is a legal expert licenced to practice law, or when it disclosed 'Haji Arif Dawood the applicant herein ' it implies that, he is the applicant who is well conversant with the case.

She said, these by necessary implications and by them selves being added in the disclosed sources of information suffice stating the grounds of belief even though it is not a legal requirement as the basis of deposition is information and not belief. She added that, it is quite different if the basis of deposition would have been a belief, then the grounds of such belief ought to have been stated, which is not the case here, where the basis of deposition is information and the sources whereof have been disclosed.

As to the objection which has been raised regarding the defective verification of the affidavit of advocate Victoria Sosthen which on its verification clause it has indicated that, it has been "*verified and dated at Dar es Salaam this 08 day of November, 2023*", she stated that, this has been stated by Victoria to be a clerical error in paragraph 13 of her reply to the counter affidavit, as the verification of her affidavit was done in Zanzibar and it was attested in Zanzibar. She said, the said clerical error/slip of a pen is curable by amendment by simply deleting Dar es Salaam and inserting thereon Zanzibar. She said, inspiration being drawn from the decision of CAT in **Ramadhan Mikidadi v. Tanga Cement Co. Ltd**, Civil Application No. 275/01 of 2018 where the Court held:

*"Where there is defectiveness on the affidavit, the said can be amended by relying the oxygen principle"*

She said, the legal position with the regard to affidavits bearing defective verification has since changed. She said, a defective verification now not fatal, the same is curable by amendments. She said, this was held by the court of appeal in the case of ***Sanyou Service Station Ltd (Now Puma Energy (T) Ltd.*** Civil Application No. 185/17 of 2018/17 of 2018 CAT at Dar es Salaam (unreported) where it has been held as follows on page 10 of the typed ruling:

***"I wish to emphasize that from the foregoing, it can safely be conducted that, the court's power to grant leave to deponent to amend a defective affidavit, are discretionary and wide enough to cover a situation where a point of preliminary objection has been raised and even where the affidavit has no verification clause, undoubtedly, as the rule goes, the discretion has to be exercised judiciously. On the advent of overriding objective rule introduced by the Written Laws (Miscellaneous Amendments) (No. 3), Act, 2018, the need of exercising discretion is all the more relevant."***

Advocate Mwiliko has told the court that, in line with aforesaid authority, should the court find that, in one way or the other, any one of the Applicant's affidavit contains defective verification, then the applicant would pray to be granted leave to amend the same. She prayed the court to find the preliminary objection is devoid of merit and be dismissed with costs.

Arguing to the second preliminary objection which is to the effect that, ***the jurat of attestation of the affidavits of Haji Arif Dawood and that of Roman Selasini Lamwai are respectively defective for lying that the verification and swearing was done at Dar es Salaam contrary to the Commissioner for oath stamp;*** Advocate Mwiliko submitted that, the objection is too grossly misconceived as no lies that have deposed to the said affidavit. She said, the said affidavit have dully compiled with the law, to wit Section 8 of the **Notary Public and Commissioner for Oaths Act [Cap. 12**

**R.E. 2019]** of the Laws of Tanzania which is parimateria to Section 39 of the **Advocates Act, 2020 of Zanzibar**. She said, Section 39 of Advocates Act, 2020 of Zanzibar states:

***"A Notary Public shall, before whom an oath or affidavit is taken or made under this Act, shall state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made."***

She said, in his submission, Counsel for the Respondent has submitted that, the jurat of the affidavit affirmed by Haji Arif Dawood and that which has been sworn by Roman Selasin Lamwai show that the said affidavits have been respectively affirmed and sworn in Dar es Salaam while the Commissioner for Oaths is practicing in Zanzibar and that his stamp and address are in Tunguu Zanzibar, thus it is a lie. She reiterated that, the submission is grossly misconceived for wrongful interpretation of the law on Notary Public and Commissioner for Oaths, as deposed in he affidavit. She said, Counsel for the applicant Ms. Victoria Sosthen Mwiliko deposed as follows in paragraph 10 of her reply to the counter affidavit that: *"...the affidavit of Haji Arif Dawood and Roman Selasini Lamwai were drafted in Zanzibar and signed and attested in Dar es Salaam before Mohamed H. Nassor a Zanzibar based Advocate while in Dar es Salaam. What indicated as Tunguu in Zanzibar is the address of the Notary Public/Commissioner for Oaths while the place where it was attested is Dar es Salaam."*

She said, the place where the affidavit were sworn has been clearly indicated in the jurat as Dar es Salaam, to wit, AFFIRMED at DAR ES SALAAM in respect of the affidavit of Haji Arif Dawood and sworn at Dar es Salaam in respect of the affidavit of Roman Selasini Lamwai. Thus she said, there is a clear compliance with the requirement of the law to state the place at which the oath was administered. She said, the jurat went on to show and state the signature, name, address and qualification of a person before whom the oath was administered, the address show the location and situate of the Commissioner for Oaths before whom the oath was administered but not the place where the oath was administered; for, a Commissioner for Oath in Zanzibar, notwithstanding the situate of his office, can administer oath in Pemba, Unguja, Dar es Salaam, Tanga or elsewhere on a matter he is called upon to administer oath.

She said, what is required to do is to show in the jurat the place where he is administering the oath and to provide his name, address and qualification. She said, his address will indicate his

usual place of business where it sits but the place for administering the oaths can be anywhere in the United

Republic of Tanzania or abroad and this has to be stated in the jurat as has been correctly done by the applicant in his affidavit.

Ms. Mwiliko has told the court that, the respondent is laboring under confusion between the place where the oath was administered and the residential/office address where the Commissioner for oaths ordinarily conducts his business. She said, it is this confusion he is laboring on that made him to state that the deponents have lied to their respective affidavits while they have not lied. She said, while laboring under the said confusion, Counsel for the Respondent relied on the rubber stamp of the Commissioner for Oaths which indicates that, he is the Advocate of the High Court of Zanzibar while the rubber stamp has never been part of the jurat as was held in the case of **DB. Shapriya and Company Ltd v. Bish International B.V.** Civil Application No. 53 of 2002 (unreported), but quoted with the approval by the Court of Appeal of Tanzania in the case of **Zubeir Mussa v. Shinyanga Town Council** [2007] TLR 104 at 111 para C and D where it was observed and held that:

***"The Court was of a firm conclusion that the need to show in the jurat the place where the oath was taken was indispensable, and this cannot be substituted by the name of the place in the advocate's rubber stamp. After all such rubber stamp is never part of the jurat of attestation."***

Ms. Mwiliko has further submitted that, the applicant's affidavits have complied with the law as enunciated by the case of **Zubeir Mussa v. Shinyanga Town Council** [2007] TLR 104 by clearly showing the place where the attestation was done/the oath was administered, thus it is distinguishable and does not anyhow support the respondent's case. She said, the issue of telling lies is evidential one requiring proof and can not be entertained at this stage of preliminary objection. She said, in the event this honourable court finds that the affidavits of Haji Arif Dawood and that of Roman Selasini Lamwai are incurably defective, which is not likely, then the remaining affidavit of Victoria Sosthen Mwiliko which is not defective and the defect if any, is clerical amendable there and then, can still sustain the application and therefore, the

same be ordered to proceed to hearing of the application on merit. She said, the preliminary objections are devoid of merit and deserves to be dismissed with cost.

Having gone through the rival submissions of the parties as submitted by their learned advocates, then the crucial issue for determination is whether the objections raised have merits.

In responding to the above posed question, I will answer three points of the objection together to wit the second point which states that ***"the jurat of attestation of the affidavit of Haji Arif Dawood is defective for lying that the verification and swearing was done at Dar es salaam contrary to the commissioner for oaths stamp"***, the third point which states, ***"the jurat of attestation of the affidavit of Roman Selasini Lamwai is defective for that the verification and swearing was done at Dar es Salaam contrary to the commissioner for oaths stamp"***, and the six point which states that, ***"the verification of the affidavit of Victoria Sosthenes Mwiliko is defective for containing lies that the verification was done at Dar es Salaam contrary to the Commissioner for Oaths stamp"***.

In determining the above three objections, it must be cleared that, when we talk about preliminary objection, one has to bear in mind that, it must be pure point of law which if argued may dispose of the suit; a preliminary objection can not be raised if any fact has to be ascertained, that is, it can not be based on unascertained factual matters. See the case of **Musanga Ng'wanda vs. Chief Japhet Wanzagi and Eight Others [2006] TLR 351 (CAT)**. The decision of the above cited case law has followed the authority in the famous case of **Mukisa Biscuit Manufacturing Company Ltd v. West End Distributors Ltd [1969] EA 296** where the East Africa Court of Appeal said at page 700:

***"...a preliminary objection consists of points of law which has been pleaded, or which arises by clear implication out of pleadings, and if which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."***

Moreover, at page 701 Sir Charles Newbold, P. said:

***"A preliminary objection is in the nature of what used to be a demurrer, it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side, are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of judicial discretion."***

In the basis of the foregoing authorities, what comes to our mind is that, any objection whose determination requires the proof of evidence will not qualify the test of a valid preliminary objection. In our case at hand, for instance, the issue as to whether ***the jurat of attestation of the affidavit of Haji Arif Dawood and the verification of the affidavit of Victoria Sosthenes Mwiliko, contain lies or not*** is a matter that supposes to be proved by evidence. Thus, it can not be disposed in this stage of preliminary objection. Likewise, the issue as to whether, ***the jurat of attestation of the affidavit of Roman Selasini Lamwai, the verification and swearing, was done at Dar es Salaam or not,*** also is a matter which needs evidence to prove and it can never be disposed of in this stage of preliminary objection.

For that reasons, since the disposal of the aforementioned points number two, four and six requires evidence to prove, thus the court is of the opinions that, they are not points of law and they are hereby overruled. Now the remaining objections will be the objections number one (1) and five (5).

Well, coming the point number one (1) of the objection which states, ***"The verification of the affidavit of Haji Arif Dawood is defective for not giving the grounds of his statement of belief"***; I wouldn't like to say that, in the case of ***Jamal S. Mkumba and Another v. Attorney General***, Civil Application No. 240/01 of 2019 (unreported), cited in the case of ***Jacqueline Ntuyabaliwe Mengi and Two Others v. Abdiel Reginald Mengi and Five Others***, Civil Application No. 332/01 of 2021, CAT at Dar es Salaam; the Court observed that:

***"...the verification clause is one of the essential ingredients of any valid affidavit which must show the facts the deponent asserts to be true of his own knowledge and those based on information or belief."***

Again, in the same case of **Jacqueline Ntuyabaliwe Mengi and Two Others** (supra), the court stated that, *"the purpose of verification in the affidavit is basically to enable the court to know which facts can be said to be proved on the affidavital evidence and those which may be true from information received from other persons or allegations based on records"*.

In that case of **Jacqueline Ntuyabaliwe Mengi and Two Others** (supra), the CAT, took the stance enunciated in the case of **Lisa E. Peter v. AI – Hushoom Investment**, Civil Application No. 147 of 2016 (unreported) while making reference to an Indian case of A.K.K. Nambiar v. Union of India (1970) 35 CR. 121 where it was stated as follows:

***"The importance of verification is to test the genuineness and authenticity of allegation and also to make the deponent responsible for allegations. In essence verification is required to enable the court to find out as to whether it will be safe to act on such affidavit evidence. In the absence of proper verification clause, affidavits cannot be admitted as evidence"***.

Coming to our case at hand, In his verification, the applicant Haji Arif Dawood stated clearly that, the statement from paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13 and 14 are true to the best of his knowledge while the statement in paragraph 10 (i) to (vii) is true according to the advise he received from advocates Roman Selasini Lamwai of Dar es Salaam and Victoria Sosthenes Mwiliko of Mpendae Zanzibar and which advise he verily believe to be true. In my opinion, the verification of the affidavit Haji Arif Dawood is in compliance with the law because, it has shown the facts which he asserts to be true on his own knowledge and those based on his own knowledge which he received from other persons (i.e Advocate Lamwai and Advocate Victoria) which he believed to be true. For that reasons, objection number one is found as baseless and overruled.

With the regards to the last objection which is objection number five which is to the effect that, **the verification of the affidavit of Victoria Sosthenes Mwiliko is defective for not giving the grounds of belief of the information received and averred in her affidavit;** I'm saying that , in the verification of her affidavit, Adv. Mwiliko stated that, the informations contain in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 (i) to (vi), 11, 13 and 14 are true to the best of his own knowledge. Indeed, she said, the information contained in paragraph 12 is partly



true according to information she received from Haji Arif Dawood the applicant herein, which information she verily believed to be true. Therefore, in the light of the foregoing legal authorities cited earlier as well as Order VI r. 15 (2) of the Civil Procedure Decree (supra), I have not seen any legal faults in the verification of the affidavit of Victoria Sostheness Mwiliko. The verification is in compliance with the law. Therefore, the objection against this verification must fail.

In the light of the forgoing reasons, I'm convinced to find out that, all preliminary objections raised against the application are not meritorius and are hereby overruled. Consequently, the application in question to wit Miscellaneous Application No. 142 of 2023 originated from Civil Case No. 22 of 2009 is hereby ordered to proceed for hearing on the merits. So ordered.

Ruling delivered and dated on 22<sup>nd</sup> March, 2024.



  
**S.H. BAKARI**  
**JUDGE**  
**22/3/2024**

  
**S.H. BAKARI**  
**JUDGE**  
**22/3/2024**