

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA

MISC. CIVIL APPLICATION NO. 30 OF 2022

(Arising from the decision of the District Land and Housing Tribunal for Arusha at Arusha, Land Application No. 3 of 2014)

ERNEST NGIREMISHO t/a TUMAINI COLLEGE..... APPLICANT

VERSUS

BONIFACE PHILIP KIMBOKA

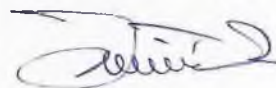
t/a EUREKA TRAINING INSTITUTE RESPONDENT

RULING

27th July & 16th September, 2022

TIGANGA, J.

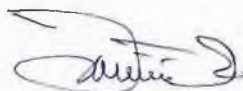
In this application, the applicant moved this Court under Section 14(1) of the Law of the Limitation Act, [Cap. 89 R.E 2019] for extension of time to file revision against the decision of the District Land and Housing Tribunal for Arusha, at Arusha delivered on 23rd November, 2021. He also asked this court be pleased to grant any other reliefs it deems fit and just to grant. The application was filed via chamber application supported by the affidavit sworn by the applicant.



Although the respondent filed the counter affidavit but did not contest in the content of the affidavit filed in support of the application. In his three paragraphs counter affidavit, in paragraph 2, the respondent deposed that, the contents of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the applicant's affidavit is (sic)noted however (sic)without prejudice.

It is now a well settled principle of law that parties are bound by their pleadings and on this I am by the decision of this Court Commercial Division in the case of **Yara Tanzania Limited versus Charles Aloyce Msemwa t/a Msemwa Junior Agrove & 2 Others**, Commercial Case No. 5 of 2013 (unreported) which was made basing on persuasion by the decision in the case of **Mojeed Suara Yusuf versus Madam Idiату Adegoke**, in SC.15/2002 of the Supreme Court of Nigeria where it was stated:

" It is now a very trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded by the court".

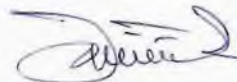


On that, also see the case of **Peter Ng'omango versus The Attorney General**, Civil Appeal No. 114 of 2011(unreported).

The non contesting counter affidavit entails that, the court should allow the application even if the respondent contested the application in the submission. This is because submissions are not evidence, they are thereby reflecting the general exposition of the party's case. In the case of **Registered Trustees of the Archdiocese of Dar es Salaam versus The Chairman, Bunju Village Government & 11 Others**, Civil Appeal No. 147 of 2006 (unreported) .

"submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence."

As long as the submissions are elaborations of the law applicable and the affidavit, going contrary to what the affidavit provides is as good as it was at all not made. The respondent's foundation must be laid from the counter affidavit in order for the response to have been clearly set, not in the submission. The submissions are only made to expound the evidence presented through the affidavit or counter



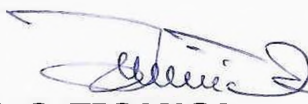
affidavit as the case may be. In this case, the submission would have merited and material had they been made in support of counter affidavit. Since the counter affidavit did not contest the application then,

In the result therefore, this application stands un contested is therefore, it is granted on the basis of not being contested. Revision to be filed within 14 days from the date of this ruling. Costs to follow event.

It is accordingly ordered.

DATED at ARUSHA, this 16th day of September, 2022.




J. C. TIGANGA
JUDGE.