

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL REVISION NO.45 OF 2009

KAHAMA MINING CORPORATION LTD.....APPLICANT

V

LUCAS B. NYANDA.....RESPONDENT

Date of last Order 8/10/2013
Date of Ruling 22/5 /2014

RULING

A. Shangwa. J.

On 2nd September, 2009, the Applicant Kahama Mining Corporation filed an application for revision of the Order of the Court of the Resident Magistrate at Kisutu made on 19th January, 2009 in civil case NO. 1 of 2009. Its application was supported by affidavit of one Godson Killiza who is the Manager there.

On 18th September, 2013, counsel for the Respondent Mr. Tasinga filed a Notice of Preliminary

objection against the application in issue on grounds that it is incompetent as it is supported by affidavit which is defective in its jurat clause and prayed the Court to strike it out. In his written submissions, he said that the name of the attesting officer is not disclosed at the jurat clause. He contended that the act of not disclosing the name of the attesting officer renders the affidavit incurably defective, and that the effect of such affidavit is to render the whole application incompetent. In support of his contention, he cited the case of **MS Bulk Distributors Limited V. Happyness Willian Molllel CAT Civil Application NO. 4 of 2008 (unreported)** in which the application was struck out for being supported by an affidavit that did not disclose the name of the attesting officer.

In his reply submissions, learned counsel for the Applicant, Mr. Yusufu Sheikh submitted that disclosing the name of the attesting officer in the

affidavit in support of the application is not important so long as the name of the commissioner for oaths is identifiable. He said, for many years in Tanzania, the practice has always been for an attesting officer to sign his name and put a rubber stamp in the jurat which contains his full name, address and title. He said, the application is not incompetent for being supported by an affidavit which does not disclose the name of the attesting officer. He argued that even if the law requires that the name of the attesting officer should be disclosed in the affidavit, a failure to disclose it cannot render the application to be struck out. In support of his submission, he cited the case of **phantom Modern Transport (1985) Ltd V. DT Dobie (Tanzania) Ltd. Civil Reference NO. 15 of 2001 (unreported)** in which the Court of Appeal of Tanzania held that where an application is supported by an affidavit which has defects that can be rectified, the

same should not be struck out, instead, the applicant should be given opportunity to file a fresh affidavit.

In this case, it is not in dispute that the name of the attesting officer in the affidavit in support of the application is not disclosed in the jurat. The question which has on more than one occasion taxed the mind of the Court is whether or not an application which is supported by an affidavit in which the name of the attesting officer has not been disclosed in the jurat should be struck out.

In the case of **Felix Mkosamali V. Jamal A. Tamim, Civil Application NO. 4 of 2012 (unreported)** and in the case of **MS Bulk Distributors Ltd V. Happyness Mollé, Civil Application NO. 4 of 2008 (unreported)** the affidavits in support of the applications did not disclose the name of the attesting officer. Those applications were struck out by the

Court of Appeal. However, in a recent case of ***Samwel Kimaro V. Hidaya Didas, Civil Application NO. 20 of 2012 (unreported)***, the same Court made a departure from its old decisions by holding categorically that where an application is supported by an affidavit without the name of the attesting officer in the jurat, it should not be struck out, instead the Applicant should always be given the opportunity to amend the affidavit by substituting it with a fresh one.

As a matter of precedent, the above mentioned authority is binding on this Court. Therefore, although the name of the attesting officer is not disclosed in the jurat of the affidavit in support of the application for revision before this Court, I cannot strike it out as prayed by Mr. Tasinga for the Respondent in his notice of preliminary objection and in his written submission. The most I can do now is to allow the Applicant to file a fresh affidavit which I hereby do. The fresh affidavit

in which the name of the attesting officer is disclosed in the jurat should be filed within a month from today.

Thus, I overrule the Respondent's preliminary objection but I make no order as to costs.



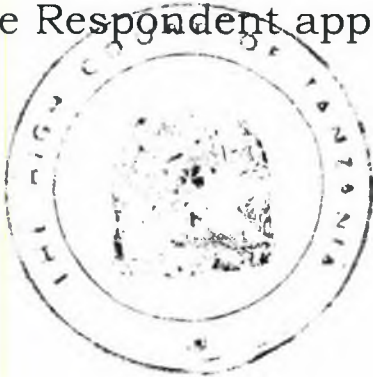
A. Shangwa

A. Shangwa.

JUDGE

22/5/2014

Delivered in Court in the presence of Mr. Mnyesha Petro for the Applicant this 22nd day of May, 2014 and the Respondent appearing in person.



A. Shangwa

A. Shangwa.

JUDGE

22/5/2014