

**IN THE COURT OF APPEAL OF TANZANIA
AT TABORA**

(CORAM: KIMARO, J.A., MANDIA, J.A. And KAIJAGE, J.A.

CIVIL APPLICATION NO. 4 OF 2012

FELIX FRANCIS MKOSAMALI.....APPLICANT

VERSUS

JAMAL A. TAMIM.....RESPONDENT

**(Application for failure to take essential steps to institute his appeal against
the decision of the High Court of Tanzania at Tabora)**

(Sumari, J.)

Dated 24th day of April, 2010

In

Misc. Civil Cause No. 2 of 2010

RULING OF THE COURT

25th April, 2013

MANDIA, J.A.:

The applicant has lodged a Notice of Motion on 10th October, 2012 praying that the Notice of Appeal filed by the respondent be struck out on the ground that the respondent has failed to take essential steps to institute his appeal. The Notice of Motion is accompanied by the affidavit of METHOD RAYMOND GABRIEL KABUGUZI. The respondent has filed a Notice of Preliminary Objection to the application whose substance is that the application filed by the applicant is defective because the jurat in the affidavit accompanying the Notice of Motion is defective. The defect

pointed out by the respondent is that whereas the attesting officer has signed the jurat, he has not indicated his name in the jurat.

Arguing the preliminary point of objection before us, Mr. George Obuya Hezron, learned advocate representing the respondent, essentially repeated the written notice of preliminary objection verbatim. In addition he referred us to the authority of **MABI AUCTIONEERS (T) LTD versus NBC HOLDING CORPORATION nee CONSOLIDATED HOLDING CORPORATION**, Civil Application No. 176 of 2004. In reply Mr. Method Raymond Kabuguzi, learned advocate representing the applicant, argued that the preliminary objection has no merit and should be dismissed on the ground that the signature and name of the attesting officer is shown in the affidavit being questioned by Mr. George Obuya Hezron, learned advocate. To illustrate his argument Mr. Method Raymond Kabuguzi showed us that the name of the attesting Officer, one M.K. Mtaki, which is shown in the stamp impressed on the affidavit in place of a hand-written name.

We have taken the arguments of both counsel in stride. The law, as it stands now, is that a rubber stamp is not part of jurat, as held in **D.P. SHAPRIYA & CO. Ltd versus BISH INTERNATION BV** [2002] E.A. 47

and quoted with approval in **WILFRED MUGANYIZI KAGASHEKI 2. HON. THE ATTORNEY GENERAL**, Civil Appeal No. 107 of 2008. We are therefore of the opinion that the affidavit of METHOD RAYMOND GABRIEL KABUGUZI has a signature of an attesting officer, but lacks the name of the attesting officer. This makes the jurat defective, a defect which renders the application incompetent. We therefore sustain the preliminary objection and strike out the application with costs to the respondent.

DATED at **TABORA** this 25th day of April, 2013.

N. P. KIMARO
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

I certify that this is the true copy of the original.



M.A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL