

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

ARUSHA CIVIL APPLIATION NO. 3 OF 2010

HADIJA ADAM.....APPLICANT

VERSUS

GODBLESS TUMBO..... RESPONDENT

**(Application for extension of time to file application for stay of execution of
the judgment and Decree of the High Court at Arusha)**

(Mmila, J.)

Dated the 23rd day of October, 2010

in

(PC) Civil Appeal No. 15 of 2005

RULING OF THE COURT

20th & 22nd March, 2013

OTHMAN, C.J.:

This is a preliminary objection by the Respondent, Godbless Tumbo challenging the application by the Applicant, Hadija Adam lodged by notice of motion on 4/3/2010, for an extention of time within which to file an application for stay of execution of the judgment and decree of the High Court in (PC) Civil Appeal No. 15 of 2005, on the ground that her affidavit in support of the application is incurably defective for not disclosing the place where it was made contrary to section 8 of the Notaries Public and Commissioner for Oaths Act, Cap 12 R.E. 2002.

Mr. Duncan Oola, learned Counsel for the Applicant briefly submitted that the Applicant's affidavit sworn on 2/3/2010 does not show the place where it was taken. It was not sufficient, he urged, for it to only show that the deponent was sworn by an Advocate. Relying on **D.B. Skapriya and Co. Ltd. V. Bish International B.V.**, Civil Application No. 53 of 2002 (CAT) (unreported) he submitted that the requirement under section 8 of the Notaries Public and Commissioners for Oath Act was mandatory. That this non-compliance rendered the application incompetent. He prayed for the application to be struck out with costs.

On her part, the Applicant submitted that the fault was a small one. She insisted that as a lay person, all that transpired was that she was sworn in Arusha and by an Advocate.

Responding to that submission, Mr. Oola pointed out that as found by the Court in **D.B. Skapriya's case** (*supra*), the fault was not minor and an advocate's rubber stamp impression on the affidavit was insufficient to show the place it was sworn. The affidavit remained defective.

A perusal of the Applicant's affidavit which was taken on 2/03/2010 visibly shows that the jurat of attestation does not disclose the place where it was sworn. This runs contrary to section 8 of the Notary Public and Commissioners for Oath Act, which provides:

*"8. Every notary public and commissioners for oaths before whom any oath or affidavit is taken or made under their Act **shall** state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made". (Emphasis added).*

As found by the Court in **D.B. Skapriya's** case, the requirement under section 8 is mandatory and is not a sheer technicality. It ought to have been complied with in the Applicant's affidavit.


In the result, and for the above reasons, I would uphold the preliminary objection. The application, accompanied by an incurably defective affidavit is declared incompetent and accordingly I strike it out with costs. Ordered accordingly.

DATED at ARUSHA this 21st day of March, 2013.

M. C. OTHMAN
CHIEF JUSTICE

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




Z.A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL