

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

CIVIL APPEAL NO. 97 OF 2013

(CORAM: OTHMAN, C.J., RUTAKANGWA, J.A., And MANDIA, J.A.)

MABAO YING APPELLANT

VERSUS

MBEYA CITY COUNCIL RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Mbeya)**

(Mwangesi, J.)

dated the 6th day of September, 2012

in

Land Appeal No. 13 of 2010

.....

RULING OF THE COURT

22nd & 23rd May, 2014

MANDIA, J.A.:

On 6/9/2012 the High Court of Tanzania at Mbeya delivered a ruling in Land Appeal No. 13 of 2010, in which it partly allowed the appeal, filed by the appellant. The appellant had filed the appeal in the High Court against the decision of the District Land and Housing Tribunal of Mbeya in Land Case No. 160 of 2007.

After the decision of the High Court, the appellant purported to lodge an application for leave to appeal to the Court of Appeal against the decision of the High Court in Land Appeal No. 13 of 2010. To do this

the appellant took out a Chamber Summons purportedly under Section 5(1) (c) of the Appellate Jurisdiction Act, 1979 as well as Rule 45(a) of the Court of Appeal Rules, 2009. The Chamber Summons which the appellant took out was supported by an affidavit which was signed by the appellant, but which was not sworn before a Commissioner for Oaths, but which indicated the person who drew and filed it. Despite all these shortcomings, the application for leave was heard by the High Court and leave to appeal was granted on 9th May, 2013.

When the appeal was called on for hearing the appellant appeared in person, unrepresented, while the respondent was represented by Ms. Mary Mgaya, learned advocate who held the brief of Mr. Sebastian Danda, learned advocate, who was indisposed. The Court asked both the appellant and Ms. Mary Mgaya for comment on the propriety of the appellant taking out chamber summons under section 5(1) (c) of the Appellate Jurisdiction, 1979 and the fact that the affidavit supporting the Chamber Summons was not sworn. Ms. Mary Mgaya conceded that the affidavit was defective, and the application for leave should have been made under Section 47(1) of the Land Disputes Courts Act, Chapter 216 of the Laws. The appellant, being a layman, did not express any opinion on the correctness of the proceedings for leave in the High Court.

The record before us shows that on 6/9/2012 the High Court Land Division (Mwangesi,J.) rendered judgment in a land matter before it. On 9.5.2013 the High Court, Land Division (Karua, J.) allowed an application for leave lodged by the appellant, and this enabled the appellant to file the present appeal. In allowing the application for leave, the High Court did not comment on the propriety of the Chamber Summons lodged by the applicant under Section 5(1) (c) of the Appellate Jurisdiction Act, 1979. The High Court did not also comment on the fact that the affidavit filed by the appellant, who was the applicant in the application for leave, had no jurat at all. In his ruling, the learned judge made the following observation :-

"I have had sight of the chamber summons and its accompanied affidavit and counter affidavit. I have also gone through the submissions presented by the learned counsels..."

The above quotation shows clearly that the honourable Judge saw the Chamber Summons with the wrong enabling section quoted and also saw the affidavit with no jurat and glossed over the obvious errors on them.

We have also seen the Chamber Summons and the affidavit before us. As we have pointed out, the affidavit has no jurat of attestation. An affidavit which has no jurat of attestation offends Section 8 of the Notaries and Commissioners for Oaths Act, Chapter 8 R.E. 2002 of the laws. In **MANTRAC TANZANIA LTD versus RAYMOND COSTA**, Civil Application No. 11 of 2010, amongst many other authorities, this Court has laid down the principle that to be valid, an affidavit must be sworn or affirmed before a person authorized i.e. a Notary Public or Commissioner for Oaths who must certify in the jurat of attestation the fact of making of the affidavit before him and the date and place when and where it was made. The case at hand is more serious in that the affidavit has no jurat of attestation at all, though it was signed by the appellant. We are therefore satisfied that there is no valid affidavit. As for the Chamber Summons taken out under Section 5(1) (c) of the Appellate Jurisdiction Act, our observation is that the proper enabling provision for Land matters is Section 47(1) of the Land Disputes Courts Act. The High Court was therefore wrongly moved in its order which granted the appellant leave to appeal to the Court of Appeal. We are therefore satisfied that the appellant had no valid leave to appeal to this Court. The purported leave granted is a travesty. We invoke our revisional jurisdiction under section 4 (2) of the Appellate Act, Chapter

141 R.E. 2000 of the laws and quash the proceedings and order for leave granted before us. Since the proceedings before us have no leave, this makes the appeal before us incompetent. We strike it out. There will be no order as to costs.

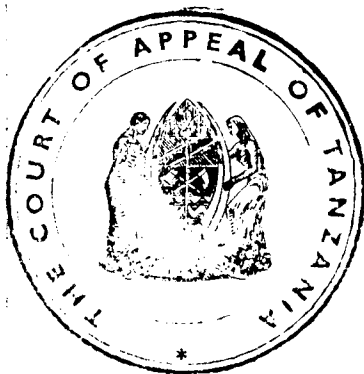
DATED at MBEYA the 22nd day of May, 2014.

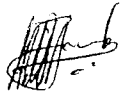
M.C. OTHMAN
CHIEF JUSTICE

E.M.K.RUTAKANGWA
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

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




F.J. Kabwe
DEPUTY REGISTRAR
COURT OF APPEAL