

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

CRIMINAL APPLICATION NO. 5 OF 2013

TRYIPHONE KABITINA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for extension of time to lodge Review in
the Court of Appeal (T) at Mwanza)**

(RUTAKANGWA, KIMARO, AND ORIYO, JJJ.)

dated the 12th day of October, 2011

in

Criminal Appeal No. 180 of 2009

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RULING

11th & 12th February 2015.

LUANDA, J.A.:

This is an application for extension of time to enable the applicant file an application for review. The application has been made under Rule 10 of the Court of Appeal Rules, 2009 (the Rules).

Before hearing the application, Mr. Paul Kadushi learned State Attorney who represented the respondent/Republic rose up and informed

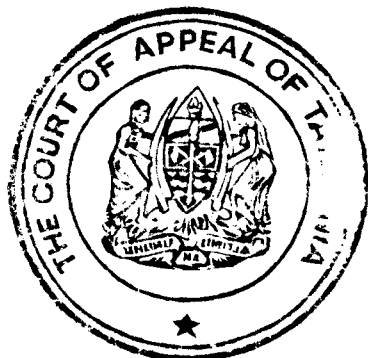
the Court that the affidavit accompanying the notice of motion is not attested at all. So, there is no affidavit to look into it for the Court to consider the application on merits. This, he went on, contravened Rule 48(1) of the Rules which requires a notice of motion to be supported by an affidavit. Since the notice of motion is not supported by an affidavit, the application is incompetent. The same should be struck out, he charged.

The applicant had nothing useful to contribute apart from asking the Court to consider his application.

It is true as observed by Mr. Kadushi that the notice of motion is supported by a defective affidavit in that it is not attested at all. An affidavit which is not attested by Commissioner for oath is as good as no affidavit to have been attached along with a notice of motion. In terms of Rule 48(1) of the Rules, for the application to be properly filed the notice of motion must be file along with an affidavit. Since the affidavit is incurably defective the application is incompetent.

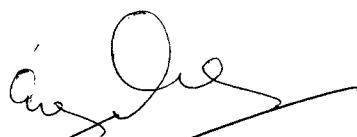
The same is struck out.

DATED at BUKOBA this 11th day of February, 2014.



B.M. LUANDA
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL