

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

(CORAM: KILEO, J.A., MJASIRI, J.A. And MMILLA, J.A.)

CRIMINAL REVISION NO. 13 OF 2010

ROBERT JOHN MAITLAND APPLICANT

VERSUS

THE REPUBLIC & 9 OTHERS RESPONDENTS

**(The Criminal Revision No. 1/2010 of the High Court
of Tanzania at Bukoba)**

(Lyimo, J.)

**Dated the 08th day of April, 2010
in
Criminal Revision No. 1 of 2010**

RULING OF THE COURT

8th & 12th February, 2016

MJASIRI, J.A.:

By a notice of motion dated April 24, 2010, the applicant Robert John Maitland is moving the Court to nullify Bukoba High Court Criminal Revision No. 1 of 2010. His application is supported by the affidavit of his legal counsel, Mr. Mathias Rweyemamu, learned advocate.

At the hearing of the application, the applicant was represented by Mr. Mathias Rweyemamu, learned advocate while the 1st respondent was represented by Mr. Hashim Ngole, learned Principal State Attorney, and the

2nd to the 10th respondents had the services of Mr. Aaron Kabunga, learned advocate.

Mr. Kabunga has raised a preliminary objection, a notice of which was filed on February 2, 2016. He has presented three grounds of objection which are reproduced as under:-

- 1. The application before the Court is incurably irredeemably incompetent for being hinged on unspecific and improper provisions which do not confer jurisdiction to the court to hear and determine the application.*
- 2. The application before the Court is incompetent for failure by the applicant to state grounds of the application in the notice of motion as required by law.*
- 3. The application before the court is incurably irredeemably incompetent for being accompanied by a defective affidavit which contains legal arguments and points of law and thus offending the law governing affidavits.*

In relation to ground No. 1, Mr. Kabunga submitted that the applicant did not make reference to the specific provisions of the Appellate Jurisdiction Act, Cap, 141, R.E. 2002 (the Act). He simply made reference to section 4 of the Act. He submitted that, when the Court is moved, specific provisions of the law have to be cited. The applicant has left the task to the Court to identify the specific provisions of the law.

With regard to the second ground, Mr. Kabunga contended that Rule 65 (1) of the Court of Appeal Rules, 2009 was not complied with. It is a requirement under the Rule that the grounds of the application have to be stated in the notice of motion. This was not done.

On ground No. 3, Mr. Kabunga submitted that the affidavit is defective as it is argumentative and contains legal arguments contrary to the requirements of the law.

Mr. Ngole, on his part, supported the arguments raised by Mr. Kabunga. Mr. Rweyemamu completely opposed the preliminary objection. According to him, ground No. 1 has no basis as the notice of motion made reference to Section 4. However he reluctantly conceded that he did not

cite the specific provisions of the law, the consequence of which is to strike out the application.

In relation to the second ground of objection, Mr. Rweyemamu stated that he has provided the grounds of application in his notice of motion, though he did not use the word *grounds*. He contended that he complied with the law.

On ground No. 3, he submitted that the affidavit in support of the application was not defective.

On the whole he argued that the irregularities were not fatal making reference to Article 107 (A) (2) (e) of the Constitution.

We on our part, after a careful review of the record and submissions by counsel are of the considered view that the Court has not been properly moved. With regard to the first ground of objection, it is evident from the record that the applicant has failed to cite the proper provisions of the law in his notice of motion. The reference made to Section 4 of the Act does not suffice. It is too general. Section 4 deals with various aspects. The applicant ought to have cited the specific provision (s) relating to his application.

The law is settled, once a party chooses to move the Court formally by a written application, it is a mandatory requirement under the law that the specific provision of the law under which it is brought must be cited. Non – citation or wrong citation of an enabling provision of the law has the effect of rendering the application incompetent.

See: **NBC V. Sadrudin Meghji**, Civil Application No. 20 of 1997, **Edward Bachwa & 3 others v. The Attorney General & Another**, Civil Application No. 128 of 2006 (CAT) (both unreported).

It is the citation of the relevant law which gives the Court the jurisdiction to grant the relief or order sought. Non citation, wrong citation of the law, section, subsections and or paragraphs of the law will not move the Court to do what it is asked and renders the application incompetent. See **Maneno Abdallah v Republic**, Criminal Application Na. 2 of 2005, **Marcky Mhango v Tanzania Shoe Company**, Civil Application No. 37 of 2003; **Almas Iddie Mwinyi v National Bank of Commerce and Another**, Civil Application No. 88 of 1998; **City bank Tanzania Limited v Tanzania Telecommunications Company** CAT (all unreported).

Thus, in view of the fact that the first ground of objection alone is sufficient to render the application incompetent, we see no need to delve on the remaining grounds of objection.

In the result, we uphold the preliminary objection and we hereby strike out the application for being incompetent.

DATED at **DAR ES SALAAM** this 11th day of February, 2016.

E. A. KILEO
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

B.M. MMILLA
JUSTICE OF APPEAL

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


E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL