

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 70 OF 2016

OSWALD PHILIP SILWAMBA APPLICANT

VERSUS

TANZANIA ZAMBIA RAILWAY

AUTHORITY.....RESPONDENT

**(Extension of time within which to file Appeal out of time from
the decision of the High Court of Tanzania at Dar es Salaam.)**

(Shangwa, J.)

Dated the 25th day of September, 2006

in

Civil case No. 68 of 2001

RULING

23rd May & 21st July, 2016

MWARIJA, J.A.:

By notice of motion filed on 16/3/2015, the applicant moved the court seeking the following orders:-

- 1. That the Honourable Court be pleased to grant an
order for extension of time to file appeal out of time.*
- 2. Costs of this application be provided for*
- 3. Any other and further relief the Court may deem fit
and just to order.*

The application which was brought under rule 10 of the Court of Appeal Rules, 2009 (the Rules) is supported by the affidavit of the applicant.

Upon service on it of the application, the respondent filed an affidavit in reply sworn by its advocate, Mr. Marco Mabala. Apart from the affidavit in reply, the learned counsel for the respondent filed a notice of preliminary objection consisting of one ground, that:

The affidavit file (sic) in this honourable court is bad in law as it contains jurat of attestation which is incurably defective."

On 23/5/2016 when the application was called on for hearing, the applicant appeared in person and unrepresented while

the respondent had the services of its advocate, Mr. Mabala, learned counsel. The Court proceeded to hear first, the preliminary objection raised by the learned counsel for the respondent. Submitting in support thereof, Mr. Mabala argued that the affidavit filed in support of the application is incurably defective in that it does not show the place at which it was taken and the date on which it was sworn. He explained that the place and the date should have been shown in the verification

clause immediately below the name and the signature of the Commissioner for Oaths who attested the affidavit.

As a result of the omission, Mr. Mabala went on to argue, the affidavit contravenes S. 8 of the Notaries Public and Commissioners for Oaths Act, Cap. 12 of the Revised Laws (the Act) which provides as follows:-

"Every Notary Public and Commissioner for Oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made."

Relying on the decisions of the Court, including **Zuberi Mussa v. Shinyanga Town Council**, Civil Application No. 100 of 2004 and **Hadija Adam v. Godbless Tumbo**, Civil Application No. 3 of 2010 (both unreported), Mr. Mabala urged me to find the affidavit incurably defective thus rendering the application incompetent.

The applicant, who as stated above was unrepresented, had no legal arguments to make in response. He merely submitted that although it is true that, according to the affidavit the place at which the affidavit

was taken and the date on which it was sworn are not shown on the space after the name and signature of the commissioner for oaths who attested the affidavit, to his understanding the place and the date are sufficiently disclosed in the affidavit.

Having read the affidavit, I am of the considered view that the same complies with the requirements of s. 8 of the Act. The place at which the affidavit was taken and the date on which it was sworn are required to be shown on the jurat of attestation. The section does not provide for a requirement that the place and the date must be shown after the name of the commissioner for Oaths who attested the affidavit. According to **Black's Law Dictionary**, 9th Edition, jurat is defined as:-

"a certification added to an affidavit or deposition stating when and before what authority the affidavit or deposition was made. A jurat typically says 'subscribed and sworn to before me this – day of (month), (year)' and the officer (usu. a notary Public) thereby certifies three things: (1) that the person signing the document did so in the officer's present (2) that the signer appeared before the officer on the date indicated, and (3), that the officer

*administered an oath or affirmation to the signer who
swore to or affirmed the contents of the document."*

In this application after the verification clause the last part of the affidavit reads as follows:-

*"Sworn **at Dar es Salaam** by the said OSWALD PHILIP
SILAMBA who is identified to me by DESIDERY
NDIBALEMA the latter being known to me personally in
my presence **this 14th day of March, 2016***

BEFORE ME.

name: Mary Masumbuko Lamwai

Sgd:

*.....
Commissioner for oaths"*

[Emphasis added].

The contents of that part of the affidavit reproduced above amount by definition, to a jurat of attestation. The place at which the affidavit was taken is shown to be at Dar es Salaam while the date on which the affidavit was sworn is shown to be on 14/3/2016. It is clear therefore that the requirements of s. 8 of the Act were complied with.

On the basis of the above stated reasons, the preliminary objection is devoid of merit. The same is hereby dismissed. Costs shall abide the outcome of the application

DATED at **DAR ES SALAAM** this 12th day of July, 2016.

A.G. MWARIJA
JUSTICE OF APPEAL

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



T.K. Simba
DEPUTY REGISTRAR
COURT OF APPEAL