

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
CIVIL REVISION NO. 4 OF 2008**

(Originating from Ilala at Samora Avenue in
Matrimonial Case No. 16 of 2005
Before M.L. Chande SDM)

MUSSA KOMBO BAKARI.....APPLICANT

VERSUS

ZAYTUNI FREDRIC SITA.....RESPONDENT

Date of Last Order 10/07/09

Date of Judgment 19/08/09

R U L I N G

MWARIJA, J.

The applicant, Musa Kombo Bakari (the legal representative of Kombo Bakari Kombo) was dissatisfied with the decision of Ilala District Court, Matrimonial Cause No. 16 of 2005. The decision was passed ex-parte. He prefers to commence revision proceedings against the said decision. Since time is not on his side for doing so, he filed the present application for extension of time. Together with the said application, he has also filed an application for revision.

Both applications, chamber summons and the affidavit in support of the application for extension of time are shown to have been drawn and filed by D.A.Shungu & Co.Advocates. All named documents have not, however, been endorsed by the person who was shown to have

drawn them. Further, the affidavit was not properly dated of both its verification clause and jurat.

From the above stated defects, Mrs Mulebya learned counsel for the respondent has raised a preliminary objection which consists of two grounds, that;

- “ (a) The application is bad in law as it is based on an affidavit which is fatally defective for having a defective verification that is not signed and dated by the applicant.*
- (b) That the application is bad in law as it is based on a certificate of urgency, chamber summons and affidavit which are not endorsed by the drawer of the documents thereby violating section 44 of the Advocates Act, Cap. 341 of the revised laws”.*

I ordered the parties to argue the preliminary objection by way of written submissions upon their prayer to that effect. The learned counsel for the respondent duly filed her written submissions within the prescribed time. Mr Msechu, learned counsel for the applicant who appeared on the date when the schedule of submissions was fixed did neither file replies nor communicate to court the reasons for failure to do so. The submissions filed on behalf of the respondent therefore remain unopposed.

Arguing in support of the first ground of the preliminary objection Mrs. Mulebya, learned counsel, submitted in effect that the defects in the affidavit filed in support of the chamber summons have similar consequence to a defective jurat. Since both the verification clause and the jurat of attestation are defective, the learned counsel prayed that the application be struck out for being incompetent. She cited as authorities the Court of Appeal decision in the case of D.B.Shapriya & Co. Ltd v.Bush International BV, Civil Application No. 53 of 2002 (unreported) and High Court decision in the case of Mwananchi Marine Products Ltd v. Owner P.F. Motor vessel, Civil Case No. 123 of 1996 (unreported). She however could not attach copies of those unreported decisions.

As pointed out earlier in this ruling, both the verification clause and the jurat of attention in the supporting affidavit of the applicant are defective. The month appears to have been deleted and nothing was replaced for the deletion. The issue is whether such defects are fatal such as to render the application incompetent as submitted by the learned counsel for the respondent. The answer is readily in the affirmative. Failure to properly date the jurat of attestation alone suffices to render the application incompetent because, as stated by Mrs Mulebya, learned Counsel, that is a breach of S.8 of the Notaries Public and Commissioners for Oaths Act, Cap. 12 (hereinafter referred to as “the Act”) which provides as follows;

“ 8. 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”.

The dictates of that section are clear. Statement by a notary public or commissioners for oaths, of a place and date on which an affidavit is taken is mandatory. Apart from the authorities cited by the learned counsel for the respondent, there are a number of other authorities to that effect. In Mabi Auctioneers (T) Ltd v NBC Holding Corporation nee Consolidated Holding Corporation Civil Application No. 178 of 2004 (CA)(DSM) (unreported), Munuo, J.A when considering the effect of non-compliance with s. 8 of ~~the~~ ^{that} Act held as follows;

“ In the absence of a date of attestation, place of attestation, or the name and signature, or the names and signatures of both the deponent and notary public who administered the oath or affirm the deponent to the affidavit, an affidavit would be fundamentally defective and hence invalid.....the date omission invalidated the purported affidavit in support of the application which in turn rendered the application incompetent”.

The second ground of the preliminary objection concerns non-endorsement of the documents; the chamber summons and the affidavit. Since I have already found the application to be incompetent, I need not consider that ground. As the application has been found to be incompetent, the same is hereby struck out with costs.

A.G. MWARIJA

JUDGE

19/8/09

Date 19-8-2009

Coram: A.G.Mwarija, J.

For the Applicant : Mrs Mulebya for Mr. Msechu

For the Respondent : Mrs Mulebya

CC: Reteti

Ruling delivered


A.G. MWARIJA

JUDGE

19/8/09