

**IN THE HIGH COURT OF TANZANIA
AT MTWARA**

MISC. LAND CASE APPLICATION NO. 6 OF 2013

HAMISI SIMBA MKWANGO & 15 OTHERS ---APPLICANTS

VERSUS

AMINA BAKARI MTIMA ----- RESPONDENT

R U L I N G

23rd day of July, 2013 and 23rd August, 2013

M.G MZUNA, J:

Hamisi Simba Mkwango who is appointed and authorized by other applicants to be their lawful representative under power of Attorney is applying for extension of time to file an application to set aside the ex parte judgment in Land case No. 3 of 2012 which was delivered on 14/12/2012 (Hon. Mipawa, J). He also prayed for this court to stay the execution of the said judgment. The application is by chamber summons supported by affidavit.

The first issue is whether this court is properly moved?

The application is preferred under Section 95 and Section 14 of the Law of Limitation Act, Cap 89 R.E 2002. My close reading of Section 14 which is relevant to this application shows that there are sub sections (1) and (2). Failure to specify the subsection makes this application

incompetent for wrong citation and therefore this court is not properly moved. That position of the law was amply stated in the case of Anthony J. Tesha vs. Anita Tesha, Civil Appeal No. 10 of 2003, CAT-at Arusha, (unreported). The court held at page 5 that:

"This court has said a number of times that wrong citation of an enabling provision of the law or a non-citation renders an application incompetent".

In that case of **Anthony Tesha**, Supra, there was a mere citation of section 5 without indicating the sub-section and the paragraph. It was found to be tantamount to non-citation. I would equally adopt that stand in the case under consideration as the facts are more or less the same as the applicant never specified the subsection under Section 14.

The second issue is whether there is a proper affidavit as per the requirements of the law?

I have noted that the attesting officer never shown his name. That has rendered the affidavit defective as it does not meet the requirement of Section 8 of the Notaries Public and Commissioners for Oaths Act, Cap.12 R.E. 2002. That position was stated in DIRECTOR OF PUBLIC PROSECUTIONS VERSUS DODOLI KAPUFI and Another CRIMINAL APPLICATION NO. 11 OF 2008 CAT where it was held that:

"Total absence of the jurat, or omission to show the date and place where the oath was administered or the affirmation taken,

or the name of the authority and/or the signature of the deponent against the jurat, renders the affidavit incurably defective." (Citing

with approval the case of **D .P. Shapriya & Co. Ltd vs. Bish International B.V** [2002] E.A. 47, and **Zuberi Musa vs. Shinyanga Town Council**, (CAT) Civil Application No. 100 Of 2004 (unreported))

to mention but few. The court observed further that:

*"In the **SHAPRIYA** case (supra), this Court categorically ruled that the requirement to strictly comply with section 8 of Cap 12 is mandatory and not a sheer technicality and that regularities in the form of a jurat cannot be waived at all by parties".*

The above words I am sure are a sounding note to the applicant. I learnt about these defects when I was composing my ruling and since it is the point of law, it can be raised anytime. The second issue is answered in the negative that there is no proper affidavit as per the requirements of the law. Defective affidavit renders the application incompetent.

In the final analysis this application which is incompetent is struck out with cost.

M. G. MZUNA,
JUDGE.
23/8/2013

Court: Ruling delivered this 23rd day of August 2013 in the presence of the Parties.

M. G. MZUNA,
JUDGE.
23/8/2013

