

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

MISCELLANEOUS LAND CASE APPLICATION NO. 1 OF 2013

MANOGOLEKU MASANJAAPPLICANT

VERSUS

NTUMBI KASHINDYERESPONDENT

RULING

04 & 10/9/2013

S.M.RUMANYIKA, J.

Through the services of Mr. Timoth Sichilima learned advocate, Manogoleku Masanja (applicant) seeks extension of time within which to appeal against judgment and decree of the district land and housing tribunal – Tabora (DLHT) meted on him on 20/06/2012. Mr. Kayaga learned advocate appears for Ntumbi Kashindye (the respondent)

The application is supported by affidavit of the said Manogoneku Masanja.

However, when it was called up for hearing, there was a 3 ground - preliminary objection lodged by the counsel on 7th August, 2013. As the application was incompetent, having been supported by a defective affidavit: - one; the name of attesting officer not disclosed (contrary to section 8 of the notaries public and commissioner for oaths Act). Two the commissioner for oaths never indicated if he knew the deponent before or was identified by else body to the later. Contrary to section 10 of the oaths (judicial proceedings) and statutory declaration Act 1966 Cap. 34 R.E 2002 and three; the affidavit contained some prayers like a plaint does. This contravened order XIX rule 3 of the civil procedure code cap. 33 R.E 2002. Counsel cited in support of the 1st limb of the p.o, the authority in Felix Francis Mkosamali V. Jamall Tamim civil application No. 12 of 2012 (CAT) sitting at Tabora and Simplisius Felix Kijuu Isaka V. The NBC, Civil application No. 24 of 2003 (CAT) at Dar es salaam. Counsel prayed for striking out of the appeal with costs.

On his part, Mr. Sichilima submitted on the 1st limb that the commissioner for oaths forgot to put his name, which omission in his view, would be cured by the rubber stamp affixed thereon. That it was not fatal as it prejudiced no party to the case. (He cited the case of Kabebe V. Makani & Others (2004) 2 EA at page 83.

On the 2nd limb, counsel submitted that the defect was subject to amendment (cited Hursbery's laws of England 3rd edition vol. 15 at paragraph 847).

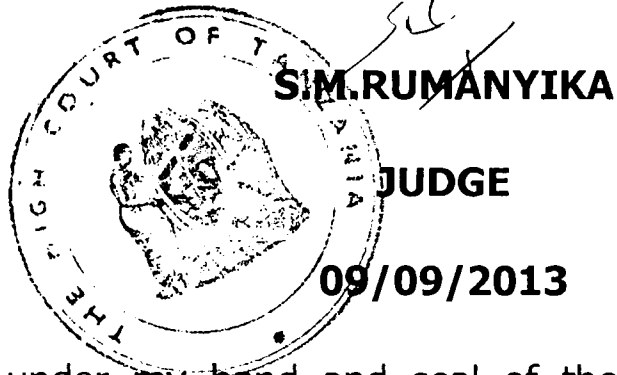
And lastly that the prayers on the affidavit were ininevitable without which one could not have got it from the start as to what was it that the applicant was seeking from the court. Counsel wound up asking me not to invite any legal technicality(s) to impede substantive justice.

The issue is whether the application is so competent that it can survive the p.o. The answer is no! It is trite law that every formal and competent application shall be supported by an affidavit. A defective affidavit is no affidavit. An affidavit showing no name of an attesting officer is defective. Whether or not it bears his rubber stamp is immaterial. Because the latter is no substitute of the name. The case of **Felix Francis Mkosamali** (Supra) cited by Mr. Kayaga is the most relevant authority. Nor can plea of over site by attesting officer make it valid. This point alone suffices to depose of the entire application. The case of **Kabebe** (Supra) will respectfully, not persuade me.

As regards the remaining two points, I will attempt no discussions because the consequences of which only fetch academic effects.

The incompetent application for extension of time is struck out with costs.

R/A explained.



Delivered under my hand and seal of the court in chambers this 10/09/2013. In the presence of the Messrs Kayaga and Sichilima learned advocates.

