

IN THE HIGH COURT OF TANZANIA

AT MTWARA

MISCELLANEOUS LAND CASE APPLICATION NO. 22 OF 2013

INVOCAVIT ZAKAYO MUSHI ----- APPLICANT

VERSUS

MOHAMED ABDALLAH WADI ----- 1ST RESPONDENT

WENER GABRIEL MPILI ----- 2ND RESPONDENT

RULING

22nd day of August and 29th day of August 2013

M. G. MZUNA, J.:

Mohamed Abdallah Wadi and Wener Gabriel Mpili have raised a preliminary point of objection against Invocavit Zakayo Mushi that the application is incurably defective as the jurat clause does not bear the name of the attesting officer.

The main issue is whether failure of the attesting authority or officer to name his/her name in the jurat of attestation has any legal effect?

It was the argument of Mr. Mkapa learned Advocate for the respondents that the jurat of attestation does not show the name of the attesting Commissioner. He said it is the requirement of the law that it must indicate the name of the officer, place and date of the attestation. The applicant's affidavit, he further said, is stamped with the seal of the State Attorney Mtwara without showing the name while knowing for sure

that the office of the Attorney General has more than 5 State Attorneys'. He referred this court to Section 8 of the Notary Public and Commissioner for Oaths Act Cap 12 R.E 2002 and the case of **M/S Bulk Distributors Limited vs Happiness William Mollel AR**, Civil Application No. 4 of 2008 (unreported) in support of his argument. It was his submission that since the affidavit is incurable defective the application should be struck out.

In response, the applicant said that the issue which is being raised is based on technicalities. That it was sworn before Mr. Mkude, State Attorney and that the issue before the court is whether that place should be developed or not. He said the Preliminary Objection is nothing because his signature is known and is stationed at Mtwara Attorney General's Chamber. This Preliminary Objection he further said is only meant to shoulder a burden of costs to the parties. It should be dismissed.

In rejoinder Mr. Mkapa, learned Advocate said that the law must be abided to because the cited provisions are mandatory.

In answering the above issue, It is now a settled position of the law that an omission in the jurat of attestation to show, when, where and the name or authority before whom the oaths is administered renders the affidavit incurably defective. That is the requirement of the law as it was held in the case of **M/S Bulk Distributors Limited** (supra) Kaijage J.A at pages 4 and 5 (unreported) that;

".....As matters stands, a person or authority before whom the affidavit accompanying the application was sworn cannot be

validly substituted by the name appearing in the advocate's rubber stamp. After all such rubber stamp is never part of the jurat of attestation..."

(The case of **Zuberi Mussa vs Shinyanga Town council**, CAT, Civil Application No. 100 of 2004 (unreported) was followed and applied).

As rightly argued by Mr. Mkapa, the learned Advocate for the respondents it is not in dispute that in this application the name of the attesting officer is not indicated in the jurat of attestation and therefore in view of the above cited case of **M/s Bulk Distributors LTD (supra)** "a person or authority before whom the affidavit accompanying the application was sworn cannot be validly substituted by" State Attorney's rubber stamp as "it is never part of the jurat". Since the Preliminary objection is based on the point of law it can never be said to be a mere technicality as argued by the applicant (See: **Karata Ernest and Others vs Attorney General**, Civil Revision No. 10 of 2010 CAT full Bench (unreported) and in **D.P. Shapriya & Co. Ltd vs. Bish International B.V** [2002] E.A. 47).

Failure of the attesting authority or officer to name his/her name in the jurat of attestation has the effect of rendering the application incompetent. The application before me which suffers from such defect must as I hereby do, be struck out with costs.

M. G. MZUNA,
JUDGE
29/8/2013

Court: Ruling delivered this 29th day of August 2013 in the presence of the applicant and Mr. Mkapa, learned advocate for the 1st and 2nd respondent.



M. G. MZUNA,
JUDGE
29/8/2013

