

IN THE HIGH COURT OF TANZANIA
AT DODOMA

MISC. CIVIL APPLICATION NO. 31 OF 2016

*(From Matrimonial Appeal No. 12 of 2015 of the District Court of Dodoma.
Original Matrimonial Case No. 62 of 2015 of the Primary
Court of Dodoma Urban)*

MUSSA CHIBUTU.....APPLICANT

VERSUS

SUSANA LICHINDIKARESPONDENT

RULING

28/11 & 07/12/2016

KWARIKO, J;

The applicant herein filed this application for extension of time to file appeal against the decision of the first appellate District Court of Dodoma dated 10/2/2016. The application has been filed in terms of *section 25 (1) (b) of the Magistrates' Courts Act [CAP 11 R.E. 2002* and is supported by the applicant's affidavit stating grounds for the delay.

In response to the foregoing the respondent filed counter affidavit to oppose the application and a notice of preliminary objection on the following three points of law;

1. *That, the Affidavit in support of the Chamber Application is bad in law for containing prayers.*
2. *That, the Affidavit in support of the Chamber Application contravenes the law whereas the jurat of attestation failed to disclose where was (sic) signed and dated.*
3. *That, the verification clause fails (sic) to disclose where dated (sic) and signed.*

During hearing of the preliminary objection the respondent essentially reiterated the points of objection. On his part the applicant argued that everything in the affidavit is correct except the dates.

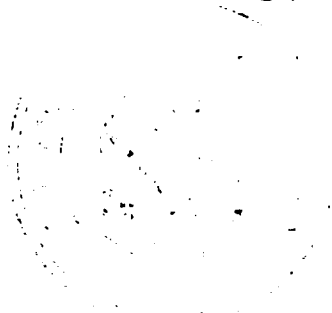
The issue to decide by this court is whether this objection is meritorious. This court has gone through the applicant's affidavit and found that it contains prayers contrary to law under *Order XIX Rule 3 (1) of the Civil Procedure Code [CAP 33 R.E. 2002]*. This part of the affidavit is thus expunged. And even though the prayer part of the affidavit has been expunged the remaining part of the affidavit can still support the application.


Secondly, the verification clause in the applicant's affidavit is not signed, dated and the place where it was signed is not shown which is contrary to the law under *Order VI Rule 15(3) of the Civil Procedure Code (supra)*.

Similarly, the jurat of attestation in the affidavit is not complete as it does not disclose where it was signed and dated.

Therefore, all these irregularities make the affidavit defective and it cannot support the chamber application. Thus, the defective affidavit renders the applicant's application incompetent before this court and it is hereby struck out. No order for costs as parties are former spouses.


Order accordingly.




M.A. KWARIKO
JUDGE
07/12/2016


Ruling delivered in court today in presence of both parties and Ms. Judith Court Clerk.




M.A. KWARIKO
JUDGE
07/12/2016

Court: Right of Appeal fully Explained.




M.A. KWARIKO
JUDGE
07/12/2016