

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

MISC CIVIL APPLICATION NO. 101 OF 2017

(Original Taxation Cause No. 5 of 2017 and Original Land Case No. 47 of 2016)

PATRICK PETER PALLANGYO.....APPLICANT

VERSUS

PASTOR OLAM ANTHONY MUSTAFA.....1ST RESPONDENT

MRS FLORENCE MUSTAFA.....2ND RESPONDENT

RULING

S.M. MAGHIMBI, J:

On the 30th day of August, 2017, the applicant, Patrick Peter Pallangyo initiated the current application under the provisions of Section 7(1)(2) of the Advocates Remuneration Order, 2015 seeking for order that the decision of the Taxing Master in Taxation Cause No. 05/2017 be quashed and further applying for the costs of the application. Subsequently on the 06th day of October, 2017, the respondents, through their Advocate Mr. Nelson Merinyo filed a notice of preliminary objection on a point of law that the applicant's Chamber Summons and the affidavit in support of the application are incurably defective. They prayed that the application be struck out with costs. On the 20th day of November, 2017 ordered that the application be disposed by written submissions. As stated earlier, the respondents were represented by Mr. Nelson Merinyo while the applicant was represented by Lord N.I.N Munuo Ng'uni, learned Senior Advocate.

I will start with the submission on the irregularity of the affidavit in support of the application. The respondent's submission was that the jurat in the affidavit in support of the Chamber Summons has no name of the person who took the oath hence no name of the deponent. They argued that this rendered the affidavit incurably defective as it contravenes the provisions of Section 10 of the Oaths and Statutory Declarations Act, Cap. 34 R.E 2002 which requires the declaration /oaths to be made in a manner prescribed under the Act.

Mr. Merinyo submitted further that the jurat in the affidavit has no signature of the person who swore it and therefore not sworn. He argued that the form in the schedule under the Section 10 cited requires the person swearing an affidavit or making a declaration to insert his signature at the right hand side of the jurat. That the affidavit is hence not signed and as a result there is no affidavit in support of the application, making the application incurably defective.

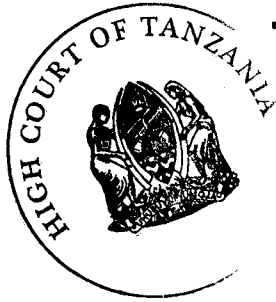
In reply, Mr. Munuo submitted that the jurat of the affidavit clearly states that it was signed by the Deponet whom had been earlier mentioned as one Patrick Pallangyo. He argued that by all stretch of imagination, the word deponent at the jurat cannot refer to any person other than Patrick Peter Pallangyo who is swearing the affidavit. On the argument that the affidavit ought to be sworn on the right hand side, Mr. Munuo countered that argument by citing the case of **M/S Block Distributors Limited Vs. Happiness William Mollé, Misc. Civil Application No. 04/2008** (unreported) where the Court of Appeal held that an affidavit is proper if it states in the Jurat of attestation when, where and the name or authority

before whom the oath is administered. He further cited the High Court (Dar-es-salaam Registry) **Civil Case No. 123/1996, Wananchi Marine Products (T) Limited Vs. Owners of Motor Vessels** (unreported) which held that the affidavit is proper if it carries the two signatures of the deponent, one in the jurat and the verification clause. He concluded that the affidavit can't be faulted and prayed that the objections are dismissed with costs.

My determination of the objection shall begin with the case of **Wananchi Marine Products (T) Limited** (Supra) cited by Mr. Munuo which clearly requires the affidavit to have the signature of the deponent both at the verification clause and the jurat of attestation. Mr. Merinyo's argument was that the jurat of attestation lacks not only the name of the deponent but also his signature. In his submissions, Mr. Munuo did not address the issue of absence of signature of the applicant as raised by Mr. Merinyo. On my part I have gone through the disputed affidavit and found that as correctly argued by Mr. Merinyo, the jurat of attestation lacks the name of Deponent and more importantly so the signature of the deponent. The jurat only states "sworn and signed at Arusha by the deponent who is known to me personally" There is no name of the deponent neither is there any signature of the deponent. The law is clear that the affidavit must be signed/attested by the deponent whereby in the jurat of attestation, his name shall also be stated. In the absence of those requirements as it is the case at hand, the affidavit is incurably defective. That said, I hereby sustain the objection raised as the jurat of attestation of the supporting affidavit is incurably defective for lacking the name and

signature of the deponent. Having so declared the affidavit incurably defective, the application before me is incompetent as it lacks a supporting affidavit. Consequently the application is hereby struck out with costs.

Dated at Arusha this 31st day of August, 2018



A handwritten signature in black ink, appearing to read "S. M. Maghimbi", is written over a horizontal dotted line.

S. M. MAGHIMBI
JUDGE