

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 439 OF 2016  
(Originating from the Decision of Kinondoni District Court in  
Affiliation Cause No. 2 of 2013)**

**GEORGE CHIMBO.....APPLICANT**

**Versus**

**JACKLIN HERMAN.....RESPONDENT**

**RULING**

**B.R. MUTUNGI, J:**

Originally at the District Court of Kinondoni in Affiliation Cause No. 2 of 2013 the respondent successfully filed an affiliation cause against the applicant. The decision was handed down on 17/6/2014. The applicant appeared to be dissatisfied by the said decision, as a result he intends to appeal herein against that decision.

The applicant in view of the above has filed an application for extension of time to file his appeal out of time. The same is brought pursuant to a chamber summons made under **section 14 of the Law of Limitation Act [Cap. 89 R.E 2002]** and **section 95 of the Civil Procedure Code [Cap. 33 R.E 2002]**. The same is supported by the Applicant's Affidavit.

However, the respondent in her counter affidavit has raised a preliminary point of law to the effect that, the applicant's affidavit is incurably defective. In that regard, the court had first and foremost to consider the said preliminary objection so raised.

The parties herein agreed to argue the said preliminary objection by way of written submissions. An order was made to this effect and they have accordingly filed their submissions timely for or against the same.

The respondent who appeared to enjoy legal aid from the Women's Legal Aid Centre (WLAC) in her written submission argued, it is uncertain as to whether the applicant is a Muslim or a Christian. The respondent insisted that, in the affidavit the applicant indicates is a Muslim and at the same time he has sworn in the Verification clause as being a Christian.

In reply, the Applicant who is dully represented by L&M Advocates argued that, the raised point of law is not in line with the legal principle found in the case of **Mukisa Biscuit Manufacturing Co. Ltd Versus West End Distributors Ltd [1969] EA 696**. The Applicant suggested the defect was caused by human error which can be corrected at any stage. He referred the court to the cases of **Jewels Antiques (T) Ltd Versus National Shipping Agencies Co. Ltd [1994] TLR 107** and **Vallabhidas Karsandas Raniga Versus Mansukhlal Jivraji and Others [1965] EA 700** to support his argument.

Having capture the respective submissions, the issue is whether the raised preliminary objection has merits to render the application incompetent before the court.

Perusing through the affidavit filed herein, it is true the applicant has at first indicated to be a Muslim but in the verification clause, he concludes to be a Christian. The question is whether the said error is fatal or not. The respondent insists the same is fatal whereas the applicant suggests the contrary.

In my considered view there is obviously a confusion created by the applicant in his corresponding Affidavit. One cannot tell for sure which religion he belongs to. The confusion so created in my settled opinion, is an error which even on a stretch of any imagination cannot be termed a "*slip of a pen*" as suggested by the applicant. One need not have a prophetic mind to find this defect or error arises

clearly out of the pleadings, to be specific the applicant's affidavit and is not curable.

The court cannot on the same footing proceed to determine the filed application on merits, since the defective Affidavit renders the application incompetent before the court. It is my settled humble finding that the applicant's application is incompetent for being supported by a defective affidavit. On the same basis the application is accordingly struck out as was decided in the case of **Simplisius Felix Kijuu Issaka. Vs The national Bank of Commerce Limited (Civil Application No. 24 of 2003) CAT - Dar es Salaam** that:-

*“a defective Affidavit in support of a notice of motion renders the application incompetent. It leaves the application without legs to stand on. Since the application is incompetent for being supported by a defective affidavit, it must be stuck off”*

It follows that the preliminary objection is sustained with costs.

It is ordered accordingly.

  
**B.R. MUTUNGI**

**JUDGE**

**9/3/2018**

Read this day of 9/3/2018 in the presence of applicant in person and in absence of the respondent dully notified.

  
**B.R. MUTUNGI**

**JUDGE**

**9/3/2018**

Right of Appeal Explained.

  
**B.R. MUTUNGI**

**JUDGE**

**9/3/2018**