

**IN THE HIGH COURT OF TANZANIA**

**AT BUKOBA**

**MISC. CRIMINAL APPLICATION NO. 10 OF 2017**

*(Arising from the District Court of Karagwe Criminal Case No. 325  
of 2013 and 378 of 2013*

**MUCHUNGUZI GERVAZI-----APPLICANT**

**VERSUS**

**THE REPUBLIC-----RESPONDENT**

**RULING**

**MLACHA, J.**

The applicant, Mchunguzi Gervas filed an application seeking to file the Notice of appeal and Petition of Appeal out of time. The application is made under Section 361(1)(a) of the Criminal Procedure Act, Cap. 20 R.E. 2002 and is supported by the affidavit of the applicant. Upon service of the application to the Respondent/Republic, they have come with a preliminary objection on two points which read thus;

1. *That, the application is bad in law for citing a non-existing High court Registry.*

2. *That the application is bad in Law for want of attestation.*

Mr. Nestory Pascal State Attorney appeared for the Respondent/Republic to argue the Preliminary objection. The applicant appeared in person. Submitting before the court, the State Attorney said that there is no court in this country known as **"IN THE HIGH COURT OF BUKOBA AT BUKOBA"** as indicated in the Chamber Summons. Counsel submitted that the name of this court is contained in the High Court Registries Rules 2005 GN. 96/2005 as amended by GN 206 of 2014 rule 8 (2). He said that the heading should have reads **"IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA"**. He added that the court is one and what appear in the Regions are just centers of the same court.

Submitting on ground number 2, counsel pointed at the affidavit and said that the affidavit of the applicant is bad in law for want of attestation and signature of the applicant. He argued the court to struck out the application

When the applicant was invited to address the court, he said that it is not him who made the mistakes but the prison officers who drew the documents. He left the matter to the court for decision.

I have considered the objection. I agree with the learned State Attorney that there is no court in this country known as "**the High Court of Bukoba at Bukoba**". The name of this court is not the choice of parties. It is in the law. The relevant law is Rule 8 (2) of the High Court Registries Rules 1984 which read thus:

*"When any cause or matter, whether original or appellate, has been entered in a District Registry, it shall be entitled –*

*IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA*

*IN THE DISTRICT REGISTRY*

*AT.....*

*Criminal Appeal, Civil Appeal, Civil Case,  
Miscellaneous Civil Cause, Bankrupt Case,  
Matrimonial Cause, as the case may be"*

The name of this court is "**The High court of the United Republic of Tanzania** or simply **The High Court of Tanzania**"

There is no court called "The High Court of Bukoba". Calling this court that way is an error and a fatal irregularity. It makes the application improperly before the court. That disposes ground number one.

In ground number 2, the court is invited to check the attestation clause and the place for the signature of the applicant to see if the affidavit has been properly executed. I have done so. There is no attestation clause. There is no signature of the applicant. The affidavit is therefore bad in Law for want of attestation and signature of the applicant. What is called affidavit is not an affidavit. It is just a document.

The totality of the defects makes the application incompetent and improperly before the court. It cannot be left to stand. I proceed to struck it out. It is ordered accordingly.

  
L.M. Mlacha

Judge

17/9/2018

**Court:** Ruling delivered in the presence of the Applicant and Mr. Nestory Pascal, SA for Respondent.

Right of Appeal Explained.



L.M. Mlacha



Judge

17/9/2018