

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 776 OF 2018
BETWEEN
SALMA SAID MANG'URO.....APPLICANT
VERSUS
MOHAMED AMIRI.....RESPONDENT
RULING**

Date of last Order: 20/09/2019

Date of Ruling: 07/10/2019

MLYAMBINA. J.

The Applicant filed this application under ***Section 14 (1) of the law of Limitation Act Cap 89 (R. E. 2002)***. She prayed *inter alia* this Hon. Court be pleased to extend time within which the Applicant can file an appeal out of time from the Judgment of the District Court of Rufiji at Utete, Probate Cause No. 2 of 2018 delivered on 22/05/2018.

The application has been supported with an affidavit of Salma Said Mang'uro, the Applicant herein. The Respondent has raised a preliminary objection against the affidavit in support of the application. The Preliminary Objection reads:

"That, the affidavit is defective incompetent in law that the attesting officer failed to identify the deponent in the Jurat"

It was the Respondent's written submission that the Applicants affidavit in support of the application does not show the Commissioner for Oaths whether he know the Applicant or was shown to him by somebody he knew who also knew the Applicant. Basing on the decisions in the case of **Hadija Adam v. Godbless Tumbo, Civil Application No 3 Of 2010 CAT** and of **Paul Mboriko Tarimo v. Resident Director Norman (T) LTD, Misc.Civil Application No. 75 of 2012**, the Respondent prayed the application be struck out. In the later case of **Paul Mboriko** (*supra*) Juma J (as he then was) stated:

"In as much as the Applicant in the present in the present application has filed an application that is supported by a defective affidavit, there is no application for this court to consider"

The Applicant in reply submissions stated that the jurat of attestation as contained in the affidavit does show that the deponent is personally known to the attesting officer. Hence, this honorable court should not be tied up with the technicalities of the law as it has been raised by the Respondent aiming to obstruct the dispensation of justice towards the Applicant.


I have had time to go through the impugned affidavit. I noted true that in the affidavit at hand, the Commissioner for Oaths did not

indicate as to whether he personally knows the deponent or the same was identified to him by a person he personally knows. That act of not specifically stating whether or not the Applicant was known to him or her (the Commissioner) or was identified by a person who is known by the Commissioner for Oaths makes the affidavit fall short of correct declaration in the *jurat* of attestation. In the case of **Peter Mziray Kuga versus Anne Kilango Malecela and 2 Others Misc. Civil Application No. 7 of 2006** High Court of Tanzania at Moshi which quoted with approval the decision in **Ramadhani Pazi and Wambura Malima v. Tanzania Civil Aviation Authority** Revision No. 375 Of 2013 High Court of Tanzania Labour Division at Dar es Salaam (un-reported) it was stated:

".....the identity of the deponent in the supporting affidavit must be stated truly in the jurat of attestation. Whether the commissioner for oaths knows the deponent in person or has been identified to him by X, the later being personally known to the commissioner for oaths all that has to be stated truly in the jurat of attestation. The information of identification has to be clearly shown in the jurat."


In **Sanyou Service Station Ltd v. BP. Tanzania Ltd (Now Puma Energy (T) Ltd)** which was quoted with approval by this court in **John Mapunda and 54 others v. National Insurance Corporation and 2 Others Misc. Civil Application No 576 of 2017**, it was found that in the absence of proper verification, affidavits cannot be admitted in evidence.

In the premises of the above, the objection is upheld. The application stands struck out for been supported with an improper affidavit. Since the application was drawn gratis by TAWLA, I award no costs.



Y. J. MLYAMBINA
JUDGE
07/10/2019

Ruling delivered and dated this 7th day of October, 2019 in the presence of the Applicant and in the absence of the Respondent



Y. J. MLYAMBINA
JUDGE
07/10/2019