

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

MISC. CIVIL APPL. No. 102 OF 2019

REGAN KATUNZI.....APPLICANT

Versus

EMELDA MTAKIJE.....RESPONDENT

RULING

27/09/- 23/10/2019

J. A. DE-MELLO, J;

The Court is moved under **Section 14 (1) & (2)** of the **Law of Limitation Act Cap. 89 R.E. 2002**, seeking for the following orders;

- (i) That, this Honourable Court be pleased to grant leave to the Applicant to lodge an Appeal out of Time.**
- (ii) Costs of this Application is provided for.**
- (iii) Any other Order further relief this Court may deem just and fit to grant in the circumstances of this Application.**

The Application is supported by the sworn Affidavit of the Applicant himself the said **Regan Katunzi** drawn by **Mariam Hussein Abdulrahman Advocates**. Written submissions was preferred, considering persistence absence of the Applicant one moving the Court towards the said/objection raised by the Respondent on the following grounds;

1. That, the Affidavit does not disclose the place where it was sworn hence bad in law and for that regard is untenable in law.

It is the Respondent himself who adhered to that scheduling order for filing written submissions, with no reply by the defiant Applicant. A **Notification** is also on record in which the Respondent informs the Court of the predicament to retrieve the Reply from the Applicant towards the preliminary objection raised. With that position, he has even failed to file a Rejoinder and, whose translation leads to consent by the Applicant to the objection. The law on written submissions is clear, it equaled to a full hearing, failure to which tantamounts to **Want of Prosecution**. The Applicant has failed on his part and, as suggested by **Counsel Mugusi**, she has conceded to the objection. The Application is in contravention with **section 8 of the Notaries Public and Commissioner for Oaths Act Cap. 12 RE 2002** and Struck Out is justified as opposed to Dismissal that the Respondent suggested.

For academic purposes let us refresh our memories as to what **Affidavit** means. It all had originated in the case of **Leons vs. Casey [1932] K.B 576** simply to mean; **"Proof made on Oath"**.

Restricting myself to the legal aspect of the meaning in law, an Affidavit is;

“A voluntary declaration of facts written down and sworn to by the declarant before an Officer authorized to administer Oaths”.

The essential ingredients of any valid Affidavit therefore have always and will remain to be;

- (i) The statement or declaration of facts etc, by the deponent**
- (ii) A verification clause**
- (iii) A jurat and,**
- (iv) The signatures of the deponent and the person who in law is authorized either to administer the oath or to accept the affirmation.**

Section 8 of the Notaries Public and Commissioner for Oaths, Cap. 12 R.E 2002 provides and, I quote;-

“Section 8 –Every notary Public and Commissioner for oaths before whom any Oath or Affidavit is taken or made under this Act, shall state truly in the Jurat of Attestation at what place and on what date the Oath or Affidavit is taken or made”.

Upon my careful perusal I cannot but, to agree with **Counsel Mugusi**, that, there are faults/defects, to include omission of **place** as to where the **Oath** or **Affirmation** had been administered which undoubtedly renders the

entire Affidavit, incurably defective. Several authorities in support of this stance are on record and, to mention just a few are the cases of; **D.P. Shapriya & Co. Ltd. vs. Bish International B.V [2002] E.A. 47, Zuberi Musa vs. Shinyanga Town Council, (CAT) Civil Application No. 100 of 2004,** and, that, of **Wananchi Marine Products Ltd. vs. Owners Motor Vessels, Civil case No. 123 of 1996, HC Dar Es Salaam (Unreported).**

I declare, the Affidavit to be defective, the effect of such, is to **'Struck Out'** the Application as opposed to a **Dismissal** and, I so order.

Costs granted as prayed too.


J. A. DE-MELLO
JUDGE
23/02/2019.