

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

**MISC. CRIMINAL APPLICATION NO 234 OF 2019**

**(Arising from the High Court of Tanzania at Dar es Salaam with  
Extended Jurisdiction at Kibaha Criminal Appeal No. 174 of 2009)**

**SADICK HASAN ..... APPLICANT  
VERSUS  
THE REPUBLIC ..... RESPONDENT**

**RULING**

*17<sup>nd</sup> December, 2019 & 20<sup>th</sup> December, 2019*

**KISANYA, J:**

The applicant has applied for this Court to grant leave to extend time to file notice of appeal out of time. His application is made by way of Chamber Summons made under Section 361(2) of the Criminal Procedure Act, Cap. 20 (R.E 2002). The Chamber Summons was drawn and filed by IMAN OMARI MADEGA ADVOCATES and is supported by two affidavits affirmed by Iman Omari Madega, learned counsel for the applicant and Sadick Hassan, the applicant.

Facts leading to this application are gathered from the said affidavits and oral submissions made before this Court. Briefly, on 1<sup>st</sup> November, 2019 the Resident Magistrate Court of Kibaha at Kibaha (A. A. Magutu

SDRM) with Extended Jurisdiction struck out an appeal filed by the applicant on the ground that it was accompanied with defective notice of appeal. This order was made after noting that notice of appeal in support of the appeal was wrongly titled and filed out of time. The applicant was advised to file a fresh notice of appeal subject to the law of limitation and hence this application.

Mr. Iman Omar Madega, learned advocate appeared for the Applicant who was also present when this matter was scheduled for hearing. On the other side, the Republic was represented by Ms Rehema Mgimba, learned State Attorney. Although I allowed both parties to make submission on the merit application, I directed them to address me on whether *jurat* in the affidavits was proper and its effects.

The learned counsel for the applicant submitted that there are good cause for this Court to grant the application due to the following grounds. **One**, he delayed to file notice of appeal for one day because the due date was public holiday (Farmers' Day commonly as *Nane Nane*) and that the issue of title to the said notice of appeal was a technical error. **Two**, they have just discovered that the applicant had filed a proper notice in time only that it is the District Court's officers who delayed to file it in the respective file.

On the issue of *jurat* in the affidavits, the learned counsel conceded that the *jurat* in the affidavit of Iman Omari Madega does not indicate **at what date and what place** it was made or taken while affidavit of Sadick Hassan lacks the place where it was made or taken. However, Mr. Madega was of

the view that this Court has discretion of considering the application despite the said defects.

Upon taking the floor, Ms Rehema Mgimba, ~~learned~~ added that apart from defects pointed by the Mr. Madega, the name of person who witnessed both affidavits was not shown. She argued that the defects in both affidavits contravene section 8 of the Notary Public and Commissioner for Oaths Act (Cap. 12 R.E. 2002) as amended. Supporting her arguments with decision of the case of **Darusi Gidabosi vs R**, Criminal Application No 1 of 2011, CAT (unreported), Ms Mgimba submitted that both affidavits are incurably defective. Thus, she urged me to struck out the application. On the merit of the application, the learned State Attorney submitted that the applicant has failed to established ~~ed~~ good cause.

Having heard the parties, I find that issue of *jurat* in the affidavits goes to the root of competency of the application before this Court. Therefore, it is important to address that issue before considering the application on merit.

This application has been made under section 361(2) of the Criminal Procedure Act (Cap. 20 R.E. 2002). Pursuant to the section 392A (2) of this Act, an application made in written form is required to be by way of Chamber Summons and affidavit. The ingredients of a valid affidavit were stated in the case of **D.P.P. vs Dodoli Kapufi and Patson Tusalile (3)**, Criminal Application No. 11 of 2008, CAT at Dar es Salaam (unreported) to include, statement or declaration, verification clause, *jurat* and signature of the deponent and the person who is authorized either to administer the oath or to accept the affirmation.

The provision of section of 8 of the Notary Public and Commissioner for Oaths Act (Cap. 12 R.E. 2002) as amended by the Written Laws (Miscellaneous Amendments) (No. 2), 2016 provides as follows on jurat of a valid affidavit;

*“Every notary public and Commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall insert his name and state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made.”*

It was held in the case of **D.P.P. vs Dodoli Kapufi and Patson Tusalile** (*supra*), that the Notary Public and Commissioner for Oaths is required to certify in the *jurat* that the person signing the documents did so in his presence, that the signer appeared before on the date and at place indicated thereon; and that he administered the oath or affirmation to the signor, who swore to or affirmed the contents of the affidavit.

As rightly argued by the learned State Attorney, an affidavit which lacks information regarding the place where and the date when the oath or attestation was taken or is defective. It is a settled law that such defects renders the affidavit in support of the Chambers Summons incurably defective. This position was set by the Court of Appeal in different cases including the case of **Dodolo Kapufi** (*supra*) and **Darusi Gidabosi vs R** (*supra*) cited by the learned State Attorney.

I have read the affidavits of Iman Omari Madega and Sadick Hassan made in support of the Chamber Summons. The *jurat* in affidavit of Imani Omari Madega does not indicate at what place and what date the oath or affirmation was taken or made. On the other hand, jurat in affidavit of

Sadick Hassan does indicate the date on which affidavit was taken or made. In both affidavits, the Notary Public and Commissioner for Oaths who witnessed the affidavit did indicate as to whether the deponents appeared before him or not.

The identified defects contravene section 8 of the Notary Public and Commissioner for Oaths (Cap. 12 R.E. 2002) as amended. It is my considered view that such defects render both affidavits defective. I don't agree with the learned advocate that the defects are mere technicalities. The defects go to the roots of the matter in that there is no affidavit to support the application. For the aforesaid reasons, I find no need of determining the application on merit. I accordingly struck out the Application for being incompetent. The applicant may if he so wish file a fresh application.

Order accordingly.

Dated at **Dar es Salaam** this **20<sup>th</sup>** day of **December, 2019**



  
E. S. Kisanya

**JUDGE**