

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA
MISC. Land Application No. 107 OF 2019

(From The District Land and Housing Tribunal at Mbeya District)

ADAM SIMBAYA
GIDION MWAKALINGA
OKADA ZUNDA

.....**APPLICANTS**

VS

WEILES MWAMENGO
CHICKEN MWAMENGO

.....**RESPONDENTS**

RULING

Date of Ruling: 28.08.2020

Dr. A. J. Mambi, J

This Ruling emanates from the preliminary objection on points of law raised by the respondents that the application is misconceived for non-compliance with the Laws. The applicants

had earlier filed their application for extension of time supported by an affidavit. During hearing the parties prayed to argue by way of Written Submissions and this court ordered parties to do so. In their submission for the preliminary objection they filed, the respondents briefly argued that the affidavit is defective since the jurat does not show the date and place where it was attested and signed.

In response, the applicants admitted the omission but briefly submitted that the anomaly is not fatal and it can be cured by just amending the affidavit. The applicant Counsel prayed this court to amend the affidavit and proceed with application.

I have keenly gone through and considered the preliminary objection raised by the respondent and submissions from both parties. In my considered view the main issue is whether the affidavit contravenes the provisions of the law and more specifically whether such affidavit is defective or not. If the answer will be in affirmative, whether such omission if any is curable. It is on the records that the affidavit filed by the applicants is not date at the part of jurat and even the place of verification and attestation was indicated. Indeed even the applicants themselves admitted that omission. The question before

with the requirements under the provisions of the law. The word “**shall**” under the provision of the law, Order 6 Rule 14 of the Civil Procedure Code, Cap 33 [R.E.2002] implies mandatory and not option and that is the legal position under the Interpretation of Laws Act, Cap 1 [R.E.2002]. Reading between the lines on the above provision of the Rules in line with the records of this court, it is clear that the applicants have not complied with the provision of the law. This was in contravention of the provisions of the law. In my considered view, since the applicant did not comply with the mandatory requirements of the law, it is as good as saying there is no application at this court

Having observed that the omission on the affidavit by the applicant) that render the application incompetent, the answer suffices to dispose of the matter and thus the preliminary objection raised by the respondent is sustained and upheld.

Now since the affidavit is defective, it means even the application has no legs to stand. Reference can be made to the decision of the court in ***Joseph Ntongwisangue another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005*** (unreported) where it was held that:

“in situation where the application proceeds to a hearing on merit and in such hearing the application is found to be not only incompetent but also lacking in merit, it must be dismissed. The rationale is simple. Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court”.

Reference can also be made to the decision of the court of Appeal of Tanzania in ***The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others*** Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

“this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings.”

I am thus of the view that on account of the same defects there is no valid application on which this court can deal with it. From the foregoing brief discussion, I am of the settled mind that the purported application is incompetent and cannot stand as an application with defective affidavit.

In the circumstance, since the applicants’ application was invalid due to defective affidavit, it could not have founded a proper forum before this court. For the reasons stated above the application above, the application is misconceived. From my findings and reasons I have

given above, I am of the settled view that since the application before me is incompetent, what then follows is to strike it and I hereby struck it out. It is so ordered

In the premises and from the foregoing reasons, the application filed by the applicants is hereby struck out.

Order accordingly,



DR. A. J. MAMBI
JUDGE
28.8. 2020

Ruling delivered in Chambers this 28th of August, 2020 in presence of both parties.

DR. A. J. MAMBI
JUDGE
28.8. 2020

Right of appeal explained.

DR. A. J. MAMBI
JUDGE
28.8. 2020