

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CIVIL REVISION NO. 3 OF 2020

*(Arising from the execution proceedings of the Resident Magistrate's Court
of Musoma at Musoma in Civil Case No. 75 of 2016)*

PRIME CATCH EXPORT LTD APPLICANT

VERSUS

MILTON CHIKWARAKARA RESPONDENT

RULING

Date of Last Order: 03/09/2020

Date of Ruling: 03/09/2020

KISANYA, J.:

The applicant, **Prime Catch Export Ltd** has moved this Court to be pleased to call for and inspect the execution proceedings in Civil Case No. 75 of 2016 of the Resident Magistrate's Court of Musoma at Musoma for purposes of satisfying as to the correctness, legality and propriety of orders made therein. The application was made under section 43 (2) and section 44 (1)(b) of the Magistrates Courts Act, Cap. 11, R.E.2002 (the MCA). In support of the application is an affidavit sworn on 12th June, 2020.

It is on record that upon service of the application, the Respondent through **Baraka B. Makowe (Advocates)** duly filed a reply to the affidavit together with Notice of Preliminary Objection on the following points of law:

- 1. Since both the affidavit supporting the Chambers Summons is not endorsed by the drawer, the same application is incompetent.*

2. *That since the prayer sought for is not one stipulated by the law, the application is incompetent.*
3. *That this Court is moved wrongly much that it is denied the powers allegedly to exercise them.*

At the hearing of this matter Mr. Masoud Hamis, learned advocate appeared for the applicant while, Mr. Baraka Makowe, learned advocate appeared for the respondent.

In addition to the points of preliminary objection raised by the learned counsel for the respondent, the Court, *suo mottu*, asked the parties to address on whether or not the application was competent on account of being supported by the affidavit sworn by two different persons. This issue was raised after noting that the Chamber Summons, the statement of the affidavit and the verification name the deponent as IRFAN JESSA while, the *jurat* of attestation indicates that the affidavit was affirmed and signed by IRFAN JESSA WAMBURA.

When Mr. Makowe was called on to submit in support of preliminary objection, he opted to submit on the issue raised by the Court. He was of the firm view that, much as the statement of fact and verification clause of the affidavit name different person from the one who signed it, the affidavit was incurably defective. For that reason, the learned counsel argued that, the application was incompetent before the Court. He urged the Court to strike it out.

Mr. Masoud conceded that the affidavit was defective basing on the issue raised by the Court. He submitted that the proper recourse is to strike it out.

I am in agreement with the submission by learned counsel for both parties. The law is settled on what the affidavit is all about. It is a voluntary declaration of facts given in writing and sworn by the declarant before an officer duly

authorized to administer oaths. In **DPP vs Dodoli Kapufi and Another**, Criminal Application No. 11 of 2008, CAT at DSM (unreported), the Court of Appeal adopted the above definition from **Black's Law Dictionary**, 7TH Edition at page 58. The Court went on to quote with approval the following definition by **Taxmann's Law Dictionary**, D.P. Mittal, at page 138 that:

"It is a statement in the name of a person, called a deponent, by whom it is voluntarily signed or sworn to or affirmed. It must be confined to such statements as the deponent is able of his own knowledge to prove but in certain cases may contain statements of information and belief with grounds." [Emphasize supplied].

My understanding to the above definition is that, the person giving the statement of fact of the affidavit is also required to affirm/swear and sign the said affidavit. The statement of facts cannot be given by one person and let another person to sign and swear/affirm the same affidavit. This is based on the fact that the ingredients of any valid affidavit as stated in **DPP vs Dodoli Kapufi** (supra) include, among others, (i) the statement or declaration of facts by the deponent; (ii) verification clause; and (ii) the signature of the deponent.

In the instant application, the statement of fact and verification was given by one IRFAN JESSA who introduces himself as General Manager of the Applicant. However, the same affidavit was affirmed and signed by another person by name IRFAN JESSA WAMBURA. It is my considered view that, IRFAN JESSA and IRFAN JESSA WAMBURA are two different persons. Nothing in place to show that the said names refer to the same person. It follows that, the affidavit was affirmed and signed by two different persons while it is not a joint affidavit. Furthermore, it is clear that IRFAN JESSA who gave the statement of facts did

not affirm or sign the affidavit. Likewise, IFRAN JESSA WAMBURA who affirmed and signed the affidavit did not give the statement of facts and verify the same. Therefore, I find and hold the affidavit in support of the application at hand incurably defective.


For the foresaid reason, the application is incompetent for being supported by defective affidavit. It has no legs to stand on as there is no evidence to support the reasons for orders sought thereto. In the result, and as prayed by the learned counsel for the applicant, the application is hereby struck out. Each party to bear its own costs.

Dated at MUSOMA this 3rd day of September, 2020.


E. S. Kisanya
JUDGE

Court: Ruling delivered this 3rd day of September, 2020 in the presence of Mr. Masoud Hamis, learned advocate for the applicant and Mr. Baraka Makowe, learned advocate for the respondent. B/C, M. Kimweri Present.




E. S. Kisanya
JUDGE
3/9/2020