

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MSUOMA

MISC. LAND APPLICATION NO. 62 OF 2020

*(Arising from the Judgement/Decree of the High Court of Tanzania at
Musoma in Land Appeal No. 49 of 2019)*

ROCKET MAHEGA APPLICANT

VERSUS

- 1. MSAFIRI MSIGITANI MSEMBA 1ST RESPONDENT**
- 2. NYABANANE MWIKWABE MAHERI 2ND RESPONDENT**
- 3. MWAJUMA MAGANYA KITOSHI 3RD RESPONDENT**
- 4. EMANUEL MAGESA 4TH RESPONDENT**

RULING

6th and 6th October, 2020

KISANYA, J.:

The applicant, Rocket Mahega has filed an application seeking for leave to appeal to the Court of Appeal against the decision of this Court in Land Appeal No. 49 of 2019. The application is made by way of Chamber Summons and support by the applicant's affidavit sworn on 14th September, 2020.

After going through the Chamber Summons and affidavit, the Court noted that the name of drawer of the affidavit in support of the

application was not shown thereon. In that regard, when the application was called on for hearing today, parties were asked to address the Court on the competence of this application.

The applicant who appeared in person, unrepresented, conceded to the defect in the affidavit in support of the application. He prayed for leave to amend the affidavit. On the other hand, the second and third respondents objected the applicant's prayer. They moved the Court to strike out the application.

The issue raised by the Court *suo motu*, is based on section 44 of the Advocates Act, Cap 341, R. E. 2019. The Marginal note thereto reads: "*Instrument be endorsed with name and address of the drawer*". The said section requires every person who prepares or draws any document or instrument to endorse thereon his name and address. The provision of section 44 (2) of the Advocates Act (supra) provides that an instrument cannot be accepted or recognized unless it bears the name of the person who prepared it. The said section reads.


"It shall not be lawful for any registering authority to accept or recognise any instrument unless it purports to bear the name of the person who prepared it."

It is not disputed that, a person was who prepared the affidavit in the instant application was not endorsed thereon. The endorsement of pleadings by person not enrolled as practicing advocate or legal practitioner makes such pleadings defective. This is so when the document is prepared for and on behalf of the litigant. For that reason, the affidavit in the matter at hand cannot be accepted or recognised by this Court.

In view of the above, I find the application incompetent for being supported by an affidavit which cannot be accepted or recognized by the Court. It is trite law that incompetent application cannot be withdrawn or adjourned. The proper recourse is to, as I hereby strike out this application. I make no order as to costs because the issue which has disposed of this matter was raised by the Court *suo motu*. For the interest of justice, the applicant may wish to file a fresh application. It is so ordered.

DATED at MUSOMA of this 6th day of October, 2020.




E. S. Kisanya
JUDGE
6/10/2020